

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

OF THE

Convention to Amend the Constitution.

ONE HUNDRED AND TWENTY-SIXTH DAY.

TUESDAY, June 24, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. Jas. W. Curry.

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

LEAVE OF ABSENCE.

Mr. MANTOR asked and obtained leave of absence for Mr. Craig on account of ill health.

CORPORATIONS.

Mr. STANTON. I move that the Convention proceed to the consideration of the article reported from the Committee on Private Corporations, report No. 21.

The motion was agreed to, and the Convention resumed the consideration or second reading of the article on corporations.

The PRESIDENT *pro tem.* When the Convention adjourned yesterday the question was on the eighth section. It will be read.

The CLERK read as follows:

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.

Mr. FUNCK. I move to strike out all after the word "section" and insert the following:

"The legal rate of interest shall be six per cent. per annum; and banks of issue shall not be allowed to pay interest on deposits."

The PRESIDENT *pro tem.* The question is on the amendment.

Mr. FUNCK. Mr. President: I conceive it important that the rate of interest should be fixed by this Convention. An immense number of "shaving shops" are daily springing up over the country, and they are oppressing the business of the country very greatly. If there is any source from which the community at large suffers, it is from this extortion; and if this Convention will adopt some method by which they can get relief, it will be a great blessing. Banks of issue, regularly chartered, in consequence of the pressure which has been brought to bear upon them by these "shaving shops," have entered the money market and all of them have become borrowers; and in consequence of the course which they are pursuing, all the money of the community finds its way into their vaults. There it is held. No business man any longer is able to go to his neighbor and borrow money at six per cent. or five per cent. interest as was customary heretofore; but every man who goes into business without having capital enough of his own to carry it on is obliged to submit to a shave in order to prosecute it.

These banks first make money scarce, and afterwards take advantage of that scarcity to run up the rate of interest, and consequently no new enterprises are springing up in the State; no forges, manufactories or other industries are built and prosecuted, because of the scarcity of money. Real estate is selling below its actual value because there is no desire for it. If a man wants to buy a farm and has two-thirds of the money ne-

cessary he cannot buy it, because he does not know where to get the balance of the money; consequently the business community is impoverished through this system; and when we reach the proper stage of our deliberations I shall offer a section to the report now before the Convention, calling upon the Legislature to annul the charters that have heretofore been issued to these "shaving shops," in such manner, however, that no injury to the corporations shall be done, and to prevent the Legislature hereafter from granting like privileges to corporations of that character. I believe they are an unmitigated nuisance, from which the country desires to be delivered. If individuals seek to engage in business of this kind, let them do it on their individual responsibility, because it is a business utterly selfish in its character. The community derives no benefit from it. If it were some manufacturing or productive industry that was to be advanced, by which laborers were to be employed and the community benefited, it would be different, but it is a privilege to individuals only for their exclusive benefit, to the detriment of the community. For this reason I hope the Convention will think favorably of the amendment I have offered and adopt it.

Mr. NILES. Mr. President: I am opposed to the amendment and to the section. I would have had no particular objection to the section if the Convention yesterday had put the word "private" in before the word "corporation;" but if we adopt this section as it is pending to-day, it will be utterly impossible for any municipal corporation in this State to erect any public buildings or to borrow money to build school houses or anything of that kind. Now, sir, if we are to limit any corporations whatever in this State—I am speaking particularly about municipal corporations—if they are to be limited to six per cent., it will either prevent the loaning of a dollar by one of these corporations, or it will succeed, as the delegate from Columbia told us yesterday, in forcing the rate of interest up to a point that will satisfy all the corporate bodies of the State. That is just exactly what this proposition is to result in, to force up the legal rate of interest to a point that will be acceptable to the corporations, or else it will prevent the building of additional improvements in the State from this day henceforth. I, sir, am unwilling to go upon the record as voting for this proposition. It is to tie up all the industries of

this State from this day henceforth. We are putting here into the organic law a proposition that no delegate on this floor can begin to comprehend the final results of. It is in my judgment the worst species of legislation. It has no business in the Constitution; and if we were in the Legislature it would be an article of very exceptional propriety.

For these and for other reasons I hope the Convention will vote down this proposition. And if anything of this nature is needed, let it be done by law that can be repealed if found to work disastrously to the best interests of the people.

Mr. BROOMALL. Mr. President: I am not so much opposed to the amendment as I am opposed to its taking the place of the section, which, as it reads now, is to my mind a most valuable one and one that ought to have a place in the organic law. The gentleman who has just taken his seat says that if this section is passed as it stands, no corporation will be enabled to live in effect and make its improvements. I want him to tell me why. If it is true, it is because at present they are enabled to sweep the money market and no individual is allowed to compete with them. If it is true, it is because the rates of money by the laws of trade are at this time higher than individuals are allowed to give openly; and if he wants this kind of favoritism for the corporations, either public or private, to be continued, I am perfectly willing that he should be allowed to cast his vote for that unrighteous discrimination.

I do not want corporations to be deprived of a fair chance in the money market. What I want is that they should not have all the chance. What I want is that individuals should have a fair chance with them. If you want to make the community rise in a mass and by revolution put down these giant bodies that have so long ruled them with an iron hand, only keep on discriminating in their favor; only continue the process by which I, if I want to borrow, must sneak into the money market at the back door and deal with the first scamp who chooses to ask me an extortionate rate, while the agents of corporations can go in boldly at the front door and take money at the rate which the laws of trade fix, and sneer at me because I cannot compete with them.

Sir, this unfair discrimination has existed too long. In my county such a thing as borrowing upon mortgage by a

private individual at the rates at which private individuals can deal by law is a thing of the past; it is heard of no longer. I grant that the farmers there get money, some of them must get it or be broken up, but they get it how? They get it at an enormous shave; they get it at twelve per cent. and from that down to eight, and sometimes up to fifteen, while the corporations, with no better security, can get it for seven or eight; and why is this difference? Because the corporations are allowed to go in at the front door and openly bid, while we must sneak in at the back door and deal with those who are dishonest enough to take advantage of our unfortunate situation.

Now, sir, let this section go in; and what will be the result? Not that corporations will be crippled unless, indeed, they are afraid of the competition of individuals, unless, indeed, they want all the capital of the country and are not willing to let individuals come in and get their share. That I do not myself believe. I believe they would be satisfied with their share, though they have an unfair advantage as the matter now stands, because undoubtedly if individuals are allowed to deal openly, they will get no more than their share of the money of the country. But what will happen if we put this in? Simply that the corporations which have, as gentlemen say, controlled the Legislature, will force the money market open for us as well as for themselves, and the laws of trade will regulate the rates of money; and why not? This section does not say that corporations shall be limited; it only says that corporations shall be limited if individuals are. This section puts no clog upon the operations of corporations; it only says that individuals shall not be clogged unless corporations are. This section does not forbid corporations from borrowing; it only says that if you shut the money market to me, you shut it to all the world. I demand the right to buy in the markets of the world at such rates as are allowed to others. I deny your right to say that I must not buy flour when flour gets to eight dollars a barrel, but that the rich corporations shall still live. I deny your right to say that I must violate the law if I can get money at more than six per cent., and hence must pay for the risk of that violation of the law in one way or another; and yet that the gentleman's favorite corporations, about which he seems to be so particular, should be al-

lowed to get money at the market rates often at half the price which I am compelled to give. I hope the section will pass as it is.

Mr. COCHRAN. Mr. President: The question now before the Convention is not at all that which has been discussed by the gentleman from Tioga, (Mr. Niles,) as I understand it, and especially not that which has been discussed by the gentleman from Delaware (Mr. Broomall.) It is simply whether this amendment shall be substituted for the original section or not. Now, sir, it seems to me that the argument which was well stated by the gentleman from Lebanon (Mr. Funck) ought to prevail. What is the object of this amendment? The object of the amendment is to prevent corporations from forestalling the money market just as you would prevent people from forestalling any other market. They go to work and draw into their vortex the money of the country; and having it there, when individuals come to borrow from them they have to pay exorbitant rates of interest in some form or other by which the provisions of the law as it exists are evaded or violated. Now, the object of this amendment is to leave the corporation and the individual on the same footing at the legal rate of interest and no other, and not to allow the individual borrower to be put at a disadvantage.

Mr. President, this is opposed by the gentleman from Tioga, as I understand, on the ground that it would prevent municipal corporations from obtaining the funds necessary to enable them to make their improvements. Such has not been my experience or observation in the section of the State from which I come. Municipal corporations in our section of the State have always been able to get money at the legal rate of interest. They have got it heretofore; they can get it to-day; and the reason is, because the people have confidence in the security that is offered to them, and they will take the bonds of the county of York, or the obligations of the borough of York, and lend money on them at six per cent. Why, sir, the county of York is indebted in the sum of nearly \$300,000, on its own bonds, and on that sum, as I understand, it pays no more than the rate of six per cent. interest, and it always has been able, except in cases when there was suspicion thrown upon it, to obtain money at that rate;

and so has the borough of York on the few occasions when it has had to borrow money. I do not believe that it is necessary for any well managed municipal corporation which has the confidence of the public to pay one cent more than six per cent. interest, and I believe I am sustained by the experience of the section of country in which I live.

But, sir, we understand the purpose for which this section was framed, which was well pointed out yesterday by the gentleman from Columbia. It is an attempt to reach indirectly that which this Convention has refused to allow to be done directly; and that is to put power in the hands of those who wish to raise the rate of interest in this State which will enable them to work with force upon the Legislature. The idea is to compel the Legislature to do that which they have never been able to make them do yet: and that is to increase the legal rate of interest, and thus, by bringing the force and power and influence of all the great corporations in this State to bear upon the Legislature, to compel them to raise the rate of interest. Now, that is the open and undisguised purpose, and it has been avowed here, I may say, by the gentleman from Delaware this morning. What, farmers pay thirteen per cent.! Farmers pay twelve per cent.! Why, sir, no man who pays twelve per cent. as a farmer can live under it; he must go down inevitably; and my observation has been that I have never known farmers who were compelled to pay these rates of interest who were able to survive. They went into the hands of the sheriff or their property into the hands of assignees, or they go now into the court of bankruptcy whenever they are compelled to pay these rates. A farmer had better at once sell his farm and give up before he borrows money at such rates of interest. I protest here on behalf of that interest, an interest which is the foundation of all the wealth and all the prosperity of this Commonwealth, and not great corporations or any other class of the community. I protest on behalf of the agricultural interest of this State against any provision which will have the effect, directly or indirectly, of compelling them to submit to the exactions of money-dealers at the rates which they choose to place on the money which they lend.

Mr. DARLINGTON. Mr. President: I am opposed to the amendment of the gentleman from Lebanon and I am op-

posed to the proposition of the committee, and I think this Convention would do wisely to take the suggestion of the chairman of the committee and vote the section down. I think it would be unwise for us to make any provision in the Constitution whatever on the subject of interest unless we are prepared to say that the Legislature shall not at any time fix any rate of interest. This is a restraining provision. The Legislature have entire power over the subject and will act exactly as the people desire them to act from time to time unless we think it wise to take that power away. I do not; but that is the only thing we ought to say if we say anything.

Now, what would be the effect of fixing in the Constitution either the rate of six or seven per cent.? Remember that we are making an instrument for a long series of years. Such a provision might not be acceptable to the people for a year and would require to be changed. The rate of interest for money would change probably with every varying year. It might be too great now; it might be too little next year; and therefore it is unwise to fix it in the Constitution.

Now, as I am not in favor of saying that the Legislature shall never fix the rate of interest for the non-payment of money, and because I think it is wise there should be a limit fixed when a debt is unpaid what the damages shall be for non-payment, I believe such a provision is wise and should be retained. It is, therefore, that I am opposed to denying the Legislature the power to fix the rate of interest. As they have fixed it wisely and as it does suit our circumstances, I shall be entirely opposed to saying that they shall never fix any rate, and thus leave that open. I think, therefore, the best thing we can do is to negative the proposition of my friend from Lebanon and then negative the report of the committee itself.

Mr. CAREY. Mr. President: In the interest of labor, whether it is agricultural, manufacturing, or of any other description, I beg of the Convention to vote this down. It is the very worst sort of legislation. We seem to be going around in every direction to find opponents to make opposition to the Constitution, and if you go on piling them up one after another—you did a great deal in that direction yesterday—we may just as well adjourn. It is utterly impossible that our Constitution shall ever be adopted unless we put

an end to this system of legislation. We were appointed here to revise a Constitution and not to make laws. We have been making laws all the time, and we are now making worse laws than we have made yet.

I beg and pray that this whole question of money may be left out of the Constitution. It belongs to the Legislature. For years and years this has been pushed and urged on the Legislature, by the money-lenders, the men that want nine, ten, fifteen and twenty per cent. They have been begging the Legislature; but the Legislature has steadfastly refused to give them the power they want. They now tell us the reason is that the people are so stupid that they cannot understand it. Sir, the people understand their true interests. The people do not believe in paying ten per cent. or twenty per cent. The people do not believe in building up the fortunes of city millionaires, or country millionaires either.

Now, we have in this city forty thousand houses of working men, that are under mortgage. Are you going to enlist all those people against your Constitution? Are you going to compel every man who thinks as I do, that this is an abomination, to go into the field against you when the Constitution is submitted? I say distinctly, that you may make a Constitution as good as you can, you may make it as perfect in all other respects as you can, and if you put in these provisions that are asked for, they will so far counterbalance all the good there is in it that I shall feel it my duty to advise everybody by speaking and by writing to oppose the Constitution, and I will do it. I know one thing is certain, that the working men of the State will believe in me. For one vote that the gentlemen who urge this can command in this city on this subject, I will engage to furnish a thousand.

Now, are we to go around and beg and pray people to oppose the Constitution? Are we to seek everywhere opponents for the Constitution? Would it not be a great mistake? Remember, I am not asking you to omit anything that ought to be put in the Constitution. I am asking you not to legislate on this, the most important question that can come before us. Let us make a Constitution and let us quit the idea of making laws. Then we shall have some chance of having the Constitution adopted.

Mr. MACCONNELL. I merely rise to say that I desire to call the attention of the Convention to the tenth section of the article on legislation, which has been already adopted. It reads thus: "The Legislature shall not pass any local or special law fixing the rate of interest." It seems to me that that covers the whole ground. If you will make a law authorizing corporations to pay more or receive more interest than individuals, certainly that will be a special law, and it is prohibited by the provision that I have read.

Mr. WOODWARD. Mr. President: I do not intend to discuss this subject; I merely rise to say that I think this amendment to the section and the section ought both to be voted down.

Mr. CAREY. Yes; let us vote them down.

Mr. WOODWARD. The reason presented to my mind why this should be done, is not exactly the reason that my venerable friend from the city (Mr. Carey) has put forward. All this legislation to interfere between the relations of borrower and lender is injudicious. We must leave our fellow-citizens free to make their own bargains. I suppose that a constitutional provision which would regulate the manner in which these young men shall court and marry their wives would be judicious; but if that were proposed they would answer that they preferred to attend to that business in their own way. And we should leave this matter of borrowing and lending money to be regulated by the parties who sustain those relations. If one man has money to lend and another wants to borrow, let them agree upon the terms on which they shall borrow and lend. I object to a constitutional provision on the subject.

In justice to the Committee on Private Corporations, let me say that they have reported no such section. It has been interpolated upon us. I am going to vote against it, and I hope the House will vote it down.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was rejected.

Mr. LEAB. I propose to say a word on the section. There seems to be an intention on the part of the chairman of the Committee on Private Corporations (Mr. Woodward) to inform the Convention that this section crept into this article without the aid of that committee, and he says that it was interpolated. I believe that it ought to pass, if not in its present,

in some other form. Whatever effect it may have upon the Legislature with regard to this question of interest we may not be able to foresee, nor do I consider it important; but I consider it important for the financial and the business interests of Pennsylvania that there should be some regular established rate of interest by law in the State, and that that rate of interest should be left so that we can enforce it. For that reason it is that I think we should not have these shaving shops that have been sprinkled all over our State, paying interest for deposits and shaving the people at enormous rates of interest, when the regular monied institutions, the national banks of the State, are prohibited by an act of Congress from charging more than six per cent. for the money which they loan.

Why should there be this great difference? Why should these private banks be allowed to charge ten or twelve or fifteen per cent. for their money, which enables them to buy up all the deposits at the legal rate of interest, five or six per cent., which the national banks ought to have for nothing, in order that they may accommodate the whole business community with money at the regular legal rate of interest in this Commonwealth? I am connected myself with an institution of that kind, and in discounts in one year in a little bank in our county we have reached the sum of two millions of dollars, on notes that did not average three hundred dollars each, and all those discounts went to the farmers, mechanics and laboring men to pay their hands, and purchase stock and materials, at the season of the year when their means are small, because they are receiving no return from their crops, and in their regular course of business. Now, this money was diffused throughout a whole community for the regular business purposes of that community at six per cent. But there may be a bank upon the opposite side of the street, that pays six per cent. for its deposits, and loans its money, not to all the people of the community, but to a few favorites, or lame ducks who are engaged in some irregular pursuit or speculative employment, by which they can pay a rate of interest which would be ruinous to a regular and legitimate business, and thus enable the shaving banks to buy up all the deposits at interest, which the national banks ought to have for nothing in order to furnish the business community with the necessary means

to carry on the legitimate trade and traffic of the people.

We look to the national currency as the best currency we have. Our national banks are prohibited from loaning more than ten per cent of their respective capital to any one individual. These private banks may loan any sum they please to a single party. I was connected, in a professional way, not long since, in collecting money against an estate where it appeared that a private bank in a neighboring county had loaned one man \$80,000, and that at enormous rates of interest. I say this is all wrong. It is wrong to allow these private banks to do that, and it is proper that we should put into our Constitution some rate of interest which will regulate these transactions between borrowers and lenders. It ought to be a fair rate. I do not care whether it is six per cent., or seven, or eight, or five; but there ought to be a fair and equal rate for every man as well as every corporation, for every firm as well as every company; and I also do not see how there can be any objection to prohibiting these banks from receiving, directly or indirectly, a rate of interest which allows them to buy up at a legal rate all the money of the community, and thus keep it out of the business channels of the State.

I want the section to go further. I want to say that Jay Cooke & Co., Drexel & Co., DeHaven & Bro. and E. W. Clark & Co., and all the other private banks shall not go into the market with their money and say, "here, you can have money by discounting this paper at ten per cent." You can go to Third street to-day and buy the notes of corporations or of individuals, or of private banks. You can buy the paper, of a man who has recently been quoted in the public papers of the State as being worth twenty millions of dollars. I allude to Ario Pardee. You can buy his paper, guaranteed by the Lehigh Valley railroad company, at a discount of ten per cent. You can buy Asa Packer's paper guaranteed by the Lehigh Valley railroad company, at a discount of ten per cent. Yet gentlemen say that the legal rate of interest in Pennsylvania is six per cent. So it is, but if you have a legal rate of interest, that is not or cannot be enforced, it is no legal rate at all, and there is no legal rate of interest when you can buy all these men's paper at this large discount. The national banks cannot do that, and they are the banks on which you rely, the banks that have not

only to deposit dollar for dollar with the government of the United States, the bonds of that government as security for their notes, but can then only issue notes to the extent of ninety per cent. upon those deposits, and hence their paper is as good in California as it is in Philadelphia. Even if one of these banks, by some mismanagement, or some dishonest conduct upon the part of its officers, should fail, the notes of that national bank will still sell in the market at a premium after it has failed. Yet you cripple these institutions for the purpose of building up speculative interests, for the purpose of building up private corporations, for the purpose of building up those men and firms who are amassing enormous fortunes, who should be looked to as a portion of the oppressive power upon the poor in this Commonwealth, for we should not look to corporations alone.

I am opposed to them all, all of them having a different rate of interest in this State from that which the law allows. I say that we should confine them all, and let us put in a prohibition that no banking company and no corporation shall receive more interest than the legal rate fixed by the law of the State; and, if you please, I am willing to fix it in the Constitution if they are afraid that it will drive the Legislature to fixing a higher rate of interest. Why, we have to-day \$50,000,000 and probably \$100,000,000 invested by the trust companies of Philadelphia in Missouri and Illinois, where they have their agents regularly appointed to invest their money and collect their interest, and that money goes out of the material interests and the enterprises of Pennsylvania to where they can get a higher rate of interest, and that is because we are looking to that narrow and contracted policy, as I think, that we prohibit parties from making a bargain for the rate of money they shall have directly instead of indirectly.

Everything else has raised in price. I say that I am in favor of raising the rate of interest, and if we have a rate of interest let us have it universal and not partial. I am in favor of raising the rate of interest because I believe it would be to the interest of those very working classes with whom the gentleman from Philadelphia has not associated more than I have. He knows nothing more about the agricultural interest of this State, although he has theorized it, and wrote about it for years; but a year's experi-

ence is worth a life of dreaming, and I would not give a farthing for all the theorizing, unless it was based upon well-established and sufficiently proved facts or personal experience; and I know what our farmers, laborers, mechanics and business men require, and need, from actual observation and in the practical business of life.

Mr. ARMSTRONG. Mr. President: I desire to say only a few words on this question. I think it is highly injudicious that this section should pass. Prior to 1723, as is very well known, the legal rate of interest in Pennsylvania was eight per cent. In that year it was reduced to six per cent. This section I think would be wholly nugatory, it could not be enforced, and is therefore useless, and would be a mere incumbrance to the Constitution, and as such would be a reproach to the Convention which should insert it. The section prohibits any banking or other corporation to receive or pay, directly or indirectly, a greater rate of interest than is allowed by law to individuals. It is the law as to banking institutions now, and it has been over and over so held by the Supreme Court that they may purchase paper at a discount, and yet that is only a mode of receiving interest. So also corporations when they make their bonds and put them into market sell them at what they are worth. They have a certain market value and selling them at a reduced rate is their privilege to do. It is not usury and they have the right to do it, and when they cannot get more than a certain selling rate they would be forced to sell at such rate or stop their work. The law would be evaded in that respect by a hundred devices which no law could prevent.

But it is said that they shall not receive or pay a greater interest than is allowed by law to individuals. By the act of 1857 commission merchants and agents of parties not residing in this Commonwealth may contract for interest at seven per cent. Thus we find that it would be the easiest thing in the world for the Legislature to render a provision of this kind nugatory by simply enacting that some individual or class of individuals might receive interest thus and so. I think it is far wiser and safer to leave this provision under the protection of that section which we have already adopted in the article on legislation, that no local or special act fixing the rate of interest shall be passed. It is safely vested there,

and any act or any provision of the Constitution which undertakes to carry it beyond that will be an entire failure, because the modes of evasion are so easy that such law could not be enforced.

The two many reasons why it ought not to pass, but to my own mind these reasons are conclusive.

Mr. BIDDLE. I am in favor of this section. I have listened with great attention to the arguments for and against it; but I think it is right to place in the fundamental law a provision of this kind. What does it tell us? Simply that equality is equity. Simply that no distinction shall be made hereafter between the private corporation, the bank or the railroad company, and the individual.

Now, sir, I do not propose to discuss here whether it be wise or not to establish in the fundamental law a specific rate of interest; probably I should vote against that; but I do say that so long as you adhere to the principle of having a fixed rate of interest, of prohibiting a free traffic in money, no distinction should be made between the individual and the corporation. The corporation starts already with many advantages over the individual. It has got rid of the principle of individual liability. It starts on the principle of liability only to the extent of the stock, whereas an individual in business is obliged to jeopard every cent of his property. Now, what reason is there for the distinction? If the corporations, as we are told by their advocates, cannot compete in making lines of public improvement without borrowing at a higher rate of interest than that established by law, then I appeal to the common sense of every man here if it is not an irresistible argument against laying down a fixed rate of interest. Let the rate of interest be fixed by the Legislature, and expanded and contracted according to the exigencies of the community; but if you do fix it, say to the corporations, "you shall deal and be dealt with just as the individual." I cannot see a single argument against this section, and I see many for it, and I trust it will receive the sanction of the House.

Mr. MACVEAGH. Does the gentleman know that it has not been fixed in reference to individuals at all in the Constitution?

Mr. BIDDLE. I am perfectly aware of that. I started with saying that it had not been, and that I thought it unwise; but ever since we have been a people,

ever since we have been a province and a republic, this State has from time to time by enactments regulated the rate of interest beyond which it is illegal to go.

Now, I do say that if it is wise to regulate the rate of interest at all, it is wise to apply the limitation to everybody alike, and there is no reason why a great corporation should be allowed to lend or borrow, I do not care which, (take it in the alternative,) at a higher rate than the rest of the community. I therefore earnestly hope the section will pass.

Mr. COCHRAN. Will the gentleman from Philadelphia allow me to call his attention to the fact that it is avowed by the friends of this section that the expected effect of it will be to compel the Legislature by the influence of corporations themselves to raise the rate of interest?

Mr. BIDDLE. I do not understand that it is so avowed by the friends of this section. I listened with great attention to the argument yesterday and to-day. I know well that the gentleman from Columbia presented that as a new view of the question; but I never heard it avowed by the friends of the section that that was its purpose. I do not care if it is its purpose, if it is right that a large portion of the community should have the right to traffic in money at a rate different from that established by law, then it is right and fair for all; and gentlemen cannot get out of this dilemma. If they vote against this provision, they are saying to the individual undertaker of an enterprise, "you start handicapped and handcuffed in the race of commercial enterprise, but the great corporations shall be entirely discharged from the obligations to obey the law, and they may distance you in the race. Compete with them if you can under this great disadvantage." I can not imagine anything fairer than such a provision as this.

Now, as I am about to sit down, I do not intend to answer any more questions. Gentlemen may discuss the subject as they choose.

Mr. MACVEAGH. I simply rise to protest against such morality for the guidance of a Constitutional Convention from such a source. It seems to me that it is unworthy of the distinguished gentleman whose candor has been such a charm in his arguments in this Convention to tell us that it is perfectly right, after we have agreed to leave the entire question of the rate of interest to the Legislature, after we have rejected a provi-

sion fixing the rate of interest, that we should then insert a provision having no necessary or proper relation whatever to it in order to put a compulsion upon the Legislature to compel them to legislate as he desires them to do.

It appears to me to be an unworthy view, come from whatever source it may. If we want to say that no law shall be passed regulating the rate of interest, it is our duty to say so, and if a majority of this Convention decide that they will not say that, it is not worthy of him to ask us by an indirect and cowardly provision to put that in the Constitution which will, he thinks, compel the Legislature to pass such a law.

Now, it is perfectly right for men to differ on the question of usury laws. We heard elaborate arguments upon both sides of that question. We were asked to put a provision in the Constitution by the gentleman from Philadelphia on my left, whom we all respect so thoroughly, (Mr. Knight,) forbidding the Legislature to regulate the rate of interest, and we listened to elaborate arguments from the gentleman from Delaware and other gentlemen in favor of that proposition. We heard an elaborate and exhaustive argument from the gentleman from Philadelphia on my right, (Mr. Carey,) whose studies in this direction have given him a fame all over the civilized world. And upon a balance of the arguments this Convention decided to leave it to the Legislature without a binding provision in the Constitution. Now, I say it is not wise, according to my view of things, to take an indirect, unworthy and cowardly method of securing a proposition that upon a direct vote we voted down. I understand that this proposition was declared yesterday by two or three gentlemen in favor of it to lead directly to that result, to secure the repeal of the usury laws by indirection, by compelling the great corporations, I suppose, to buy their repeal from the Legislature and thus re-inaugurate some of the worst evils we are endeavoring to escape.

Mr. LILLY. Mr. President: I do not desire to add very much to what has been said on this question; but I believe in the truth of what was said by the gentleman from Delaware (Mr. Broomall) and the gentleman from Philadelphia (Mr. Biddle;) and it must be very refreshing to this Convention, as it is to me, to hear the gentleman from Dauphin, (Mr. MacVeagh,) like satan, rebuking sin. Instead of

meeting the question fairly and arguing it, he undertakes to say it is cowardly and sneaking to vote for such a thing as this. It is only putting corporations on an equality with everybody else, and it is right and proper to do it, and I will stand by it. The gentleman from Lycoming (Mr. Armstrong) talked about the corporations selling their bonds in the market at the market rates. You will not allow an individual to do that; it is usury for an individual to do it. All we ask is that individuals shall stand along side of corporations on the same basis.

Mr. BROOMALL. Mr. President: I am somewhat surprised at the language of the gentleman from Dauphin—

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

The PRESIDENT *pro tem*. The delegate from Lancaster will state his point of order.

Mr. CARTER. It is that the gentleman from Delaware has spoken once.

Mr. TEMPLE. Only on the amendment, which has been voted down.

Mr. BROOMALL. I have not spoken on the section since the amendment was voted down.

The PRESIDENT *pro tem*. The gentleman's remarks before were on the amendment, and he is now entitled to the floor on the section.

Mr. BROOMALL. Mr. President: I had the honor to offer the provision in this section which has been characterized in language so extraordinary, at an earlier stage of the business of this Convention. If there is anything sneaking or cowardly in it, it belongs to me. I take the responsibility of having offered the provision. I trust the gentleman from Dauphin knows the district I represent and one of its representatives well enough to know that it is not he who should import Harrisburg morality to set up against the morality of the district of Chester and Delaware! He knows both places too well. He knows that there is nothing sneaking or cowardly in this proposition. He is too shrewd a man not to see that if there is anything sneaking or cowardly, it is a sneaking and cowardly blow, nay, more than that, a bold blow in the face of Harrisburg borers who made money by getting legislation for the benefit of corporations and against individuals. If this is passed, no longer can the agents of corporations go to the men skilled in manipulating legislators and say, "if you will get us a special privilege that is not allowed to individuals in the way of entering the

money market, we will pay you so much money." If it is a blow at anything, it is a blow at that business; and if that business is sanctioned by Dauphin county morality, I trust that this Convention will not incline much to it.

Sir, this proposition is an open one and a fair one. It is nothing more than every individual has a right to demand of his government, and to denounce his government if it does not give it to him. It is nothing more nor less than that every individual has a right to take up arms even against his government to get—and that is equality in the law and before the law—the right to do under and before the law what every other individual or individuals associated together have the right to do. "Sneaking!" "Cowardly!" When those who represent men upon this floor demanding rights come here to say that corporations shall not have special privileges in order that they may traffic in Harrisburg law, when delegates come here and demand for individuals the same rights that these favored creatures of Harrisburg legislation have, we are to be told that we are acting sneakingly and underhandedly, and that we are making a cowardly attempt. Sir, I deny it. It is a bold attempt, and it is the boldest blow that has been struck at corrupt legislation for years and years.

Sir, you know when this thing began, when the first corporation got a special privilege to allow it to enter the money market by the front door and boldly crowd out private individuals. Then it was that this government had disgraced itself by its legislation. That was the worst of all special legislation and the business has gone on from that day to this, until to-day the only bidder that is excluded from the market of one of the most important commodities of the world is the man, the individual, the citizen, and he is excluded by these Harrisburg creations who undertake by their representatives to foist Harrisburg morality upon this Convention.

I hope this section will pass, and I hope that every man who votes against it will go home to his constituents and say to the poor farmers who have to give twelve and fifteen per cent. for their money, while the corporations can get it for eight and nine, "we have done the deed; we have crushed you for years and you cannot get from under the load that we have placed upon you." We have given these corporations a lease of life, and a

lease of all you own that will hold until at least the time arrives when another change in the Constitution can be made.

Sir, if there is anything that we have a right to demand of this Convention, it is equality before the law for every man in the community, and that at least, if there is to be any inequality, the inequality be in favor of the individual and not in favor of the corporation.

Mr. AINEY. Mr. President: If this section is to pass, it seems to me that it requires modification. I should be in favor of a uniform law, if it were possible to make one that would put all business transactions upon an equality. I am not prepared to say that such a thing is possible. I will state my amendment. I move to amend by striking out the words "to individuals," the two last words in the section, and inserting after the first word "no" the words "individual firm or," so that the section will read:

"No individual, firm or banking or other corporation shall receive or pay directly or indirectly a greater rate of interest than is allowed by law."

Mr. President, the gentleman from Bucks (Mr. Lear) is in favor of putting the national banks upon a par with other bankers in the State by limiting all to the legal rate of interest, in discount charges. Now, I doubt very much whether any gentleman could go into the county-seat of the county which the gentleman from Bucks represents on this floor and obtain the discount of a note at six per cent. interest, the present legal rate. If I were to present myself at the national bank with which the gentleman is connected in his county town and were to ask to have a note discounted at six per cent. interest I would be told, "No, sir, you must keep an account with this bank before we can discount your note. We discount only for such as keep deposits with us." It is a rule that is well understood by every business man. No notes are discounted at six per cent. The rate is nominally six per cent., it is true, but unless a deposit is kept in the bank which makes the discount equivalent to eight, nine, ten or twelve per cent., as the market value of money runs, you can get no discount. I appeal to the experience of every member on this floor at all acquainted with business transactions with national banks to say if this is not so.

A section of this character, in my judgment, is simply void and of no effect. It is folly to put into the organic law any-

thing which is inoperative. If it were possible, as I said in the outset, to make a uniform provision that would be operative and of any reliable validity I should be in favor of it. I believe it would be a wise and judicious measure of reform because we should then have a rate of interest fixed in this Commonwealth that would retain our money here and not as now, drive it out of our State into other communities by illiberal restrictions. If this section is to pass I hope my amendment will prevail. It widens the scope of the section and makes it apply to all alike. I hope it will be made as uniform in this respect as language can make it if it is the purpose of the House to adopt it, though I firmly believe it will practically prove inoperative.

Mr. HUNSICKER. I move further to amend by inserting after the word "other," the word "private."

Mr. TEMPLE. That was voted down yesterday.

The PRESIDENT *pro tem*. The amendment is not in order. It was moved yesterday and voted down.

Mr. HUNSICKER. This is an amendment to the amendment of the gentleman from Lehigh.

Mr. AINEY. I accept the amendment if it is in order for me to do so.

The PRESIDENT *pro tem*. The gentleman from Lehigh modifies his amendment by accepting the suggestion of the gentleman from Montgomery.

Mr. DALLAS. I move to amend the amendment by inserting the word "general."

Mr. AINEY. I misapprehended the amendment of the gentleman from Montgomery. I do not accept it in that form, That would shut out municipal corporations. I desire them to be included in the provision.

Mr. HUNSICKER. Then I renew the amendment.

The PRESIDENT *pro tem*. It is not in order.

Mr. DALLAS. I move to amend the amendment of the gentleman from Lehigh by inserting the word "general" between the words "by" and "law" in the second line, so as to make it read :

"No individual, firm, or banking or other corporation shall receive or pay, directly or indirectly, a greater rate of interest than may be allowed by general law."

To leave it as it is would be to permit a special law to allow it.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment, to insert after the word "by" the word "general."

Mr. DALLAS. Otherwise the amendment of the gentleman from Lehigh would leave it for the Legislature to make it valid by law; by a special act in any case. We certainly do not mean that.

Mr. ANDREW REED. If this section would have the effect which its friends on this floor claim for it, I should be in favor of it. As the section read before it was amended, and as it was reported from the committee of the whole, the object intended was, I think, a good one. I see no reason why a corporation should have an advantage which a private individual has not. But I do not think, in the manner in which the original section stands, it will have the effect for which its friends contend; it will be entirely nugatory. I agree with the able speech which the gentleman from Bucks (Mr. Lear) made on the floor. He has stated that you can go to Third street now and get the paper of the best men in the State at nine or ten per cent. Will this section have the effect of remedying that? Clearly not. It only prevents banking and other corporations from paying any greater rate of interest than is paid by individuals. You will not by this section prevent the buying of paper at a discount. A man can sell the paper of another person which he has, at any rate that it will bring in the market, and that is the way it is done. That is perfectly legal; it is not amenable to the law of usury; and what will be the effect then of this section? It will be that we shall then have no bonds bearing a greater rate of interest than six per cent., but we shall have bonds selling on the market at ninety per cent., at eighty per cent., or perhaps at seventy-five per cent.; whenever there is an industry which requires money that can pay such a rate of interest for its development, that industry will get the money. They will sell their bonds at a great sacrifice, for that they can do, and that will be the effect of this section. A railroad company will trade its bonds and pass them over to a broker, and the broker will sell them for what he can get, and in that way, indirectly, the corporations will get their money. It is true that the amendment of the gentleman from Lehigh would make the section more effective; but what will be the effect of that? It will be to cripple the interests

of this whole State. It is just the same as saying that unless a person can get money at the rate of six per cent., he must do without, unless by giving his commercial paper in such a way as to avoid the law, or by some back-door arrangement.

This will not be done where it can be avoided, and it can be avoided by going to another State. Our people will go to New Jersey or New York or some other place outside of the State, and pay there seven or eight per cent. for what money they need. The effect will be to drive capital out of the State. It is, in my opinion, the worst provision that could be put in the Constitution, because the Constitution is not the place to regulate this question of the value of money. Money may be worth six or seven percent. at one time or in a certain section of the State, and at another time or in another section it may be worth eight. Far better leave the subject to the Legislature, to be controlled at different periods, according to the requirements of the time. The best thing that this Convention could do would be to leave money free between the lender and the borrower up to a certain rate, which would be inconsiderable, and within which it should be restricted. Then individuals and corporations would be on a par. If you want to borrow money, you go to a man who has it and you give him what he is willing to take. There should be, I concede, some limit which would protect persons from unconscionable contracts, the effect of which they did not see at the time they were entering into them; but outside of that the best provision that could be made, and which would do away with all these evils, would be to let persons agree upon the rate of interest between themselves, face to face. For that reason I must vote against this section, because, in the first place, I think if the section is amended so as to make it effective, it will have a bad effect; and in the next place, if we pass the section as reported from the committee of the whole, I do not think it will have the effect intended by its friends, but will be a mere *brutum fulmen*.

Mr. BAER. I desire to call the attention of the gentleman from Philadelphia, who moved to insert the word "general" before the word "law," to the fact that there can be no necessity for adopting that amendment. We have already provided in the tenth section of the article on legislation against legislating either by general or special law on the subject of the

rate of interest. Therefore there is no necessity for the word "general" in the section.

Mr. AINEY. If in order at this time, I would like to modify my amendment.

The PRESIDENT *pro tem*. It will be better to take the question first on the amendment of the gentleman from Philadelphia (Mr. Dallas) to the amendment.

Mr. BIDDLE. I should like to have it read.

The PRESIDENT *pro tem*. It is to insert the word "general" before the word "law."

The amendment to the amendment was rejected.

Mr. J. R. READ. I would suggest to the gentleman from Lehigh the insertion of the word "or" before "firm," so as to read: "No individual or firm, or banking or other corporation," &c. I think that will read better, and accomplish what the gentleman desires.

Mr. AINEY. I accept the modification.

Mr. MACVEAGH. Upon this amendment I desire to say that I do not see that it prevents special privileges being granted to corporations. This is legislation—

Mr. AINEY. If the gentleman will allow me, I wish to modify my amendment so as to withdraw that portion of it and strike out the words "to individuals."

Mr. MACVEAGH. Then let us have it read as modified.

The CLERK read as follows:

"No individual, firm or banking or other corporation, shall receive or pay, directly or indirectly, a greater rate of interest than is allowed by law to individuals."

Mr. MACVEAGH. The objection I see to this section still, as it occurs to my mind—although in that I may be entirely mistaken—is that it is direct legislation and that the gentleman from Delaware (Mr. Broomall) is entirely mistaken in the consequences of the adoption of it. This section will require immediate action by the Legislature. It repeals the laws now existing. It repeals the privileges given to corporations, or to individuals if you choose, to sell their securities indirectly at a higher rate of interest, and thus it compels the great corporations to go to Harrisburg to lobby for a law to suit them; and it was in that direction, after the speech of the gentleman from Columbia, (Mr. Buckalew,) and the adoption temporarily of that argument by the gentleman from Philadelphia, (Mr. Biddle,) that I made the remarks I did. The suggestions of the gentleman from Columbia were that

the section was urged for this reason, and it seemed to me to be so wide a departure from the tone of arguments I had formerly heard in this body, that when the gentleman from Philadelphia openly avowed that reason I was greatly surprised. I am told by a gentleman on my right that in the heat of that discussion I used adjectives or epithets that I should not have used. If I did use them, I withdraw them as to the gentleman from Philadelphia (Mr. Biddle.) I would withdraw them as to the delegate from Delaware who became so excited, (Mr. Broomall,) except that I had not in my mind the idea that he was the father of the section. In fact I did not know that he had introduced it at all, or spoken in favor of it—I did not happen to be in the room when he spoke. I was alluding exclusively to the argument he made on the subject of the usury laws when that question was before the Convention; I thought I was complimenting him all the time and that he was smiling his gratification about it. I had no idea he was applying to himself remarks which had no shadow of reference to him. His excitement was wholly unnecessary.

My objection is this still, that it is an indirect way of getting at the result that this Convention decided, when directly offered by the gentleman from Philadelphia, not to adopt. Now, will it prevent corrupt legislation, because that we are told is one of its objects? I may be mistaken, but remember this is an act of Assembly you are putting in the Constitution. It says that the moment this Constitution goes into effect no bond shall be sold above the rate of interest allowed by the statute. What does that compel? It compels every railroad corporation and every other corporation—railroads are not alone in this matter—to go to Harrisburg and lobby for a change of that law—and to continue corrupting the Legislature as they have been doing.

Do they need any special legislation now? They need buy nothing now. But if you put this in the Constitution then they will need to buy legislation. If this Convention wants to prevent any laws regulating the rate of interest, the gentleman from Philadelphia has a section that does that in a fair, square, manly way, and if it is desired to adopt any such measure, that could be passed. But I cannot conquer my repugnance to this method of doing it, and I do not believe that under the laws we have passed that

the Legislature will pass one set of laws for corporations and another for individuals. If that is what is meant, to require all laws relating to the rate of interest to bear equally upon corporate and individual enterprises, I have no objection to that, none whatever, but I have objection to putting a repealing statute in the Constitution that will compel these corporations to go to Harrisburg and purchase legislation, for they will be driven to the necessity of doing that by such a section as this. Therefore, as we voted down the other section it seems to me that we ought to vote this down also. Even if I was in favor of the repeal of the usury laws I would not consent to secure their repeal by this indirect method.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Lehigh (Mr. Ainey.)

Mr. AINEY. I call for the yeas and nays.

More than ten members rising to second the call, the yeas and nays were taken with the following result:

Y E A S .

Messrs. Ainey, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Boyd, Brodhead, Broomall, Cochran, Cuyler, Davis, De France, Ellis, Fell, Gibson, Gilpin, Harvey, Hemphill, Kaine, Knight, Lamberton, Lear, Lilly, M'Clellan, M'Culloch, M'Murray, Mann, Patton, Purman, Read, John R., Reed, Andrew, Runk, Russell, Smith, Henry W., Wherry, White, Harry and Wright—37.

N A Y S .

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bardsley, Black, Chas. A., Bowman, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Church, Clark, Corbett, Corson, Cronmiller, Curry, Dallas, Darlington, Dodd, Dunning, Edwards, Elliott, Ewing, Finney, Fulton, Funck, Guthrie, Hall, Hanna, Horton, Howard, Hunsicker, Lawrence, Littleton, Long, MacConnell, MacVeagh, Mantor, Metzger, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purviance, John N., Purviance, Samuel A., Simpson, Smith, H. G., Stanton, Stewart, Struthers, Temple, Turrell, Walker, Wetherill, John Price, White, David N., Woodward and Worrell—67.

So the amendment was not agreed to.

ABSENT—Messrs. Addicks, Baker, Barclay, Bartholomew, Beebe, Bigler, Black,

J. S., Cassidy, Collins, Craig, Curtin, Green, Hay, Hazzard, Heverin, Landis, M'Camant, Minor, Mitchell, Newlin, Reynolds, Rooke, Ross, Sharpe, Smith, Wm. H., Van Reed, Wetherill, J. M., White, J. W. F. and Meredith, *President*—29.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. COCHRAN. Mr. President: Now that we have come back to the section itself, I hope that the Convention will vote it down. It is just one of those things which are in themselves mere *brutum fulmen*; they amount to nothing substantially; and although I voted for the amendment because I supposed if the section was to pass it would be an improvement upon it, I earnestly hope that the section will be voted down. The inevitable result of passing a section of this kind is to bring to bear upon the Legislature of the State the very worst kind of influence, that kind of influence which obtains special legislation under the color and cover of general laws, and there has been as much mischief done in the way of legislation by such laws as there has been by the most narrow private individual laws that have been enacted at any time by the Legislature.

Now, sir, the idea of its creating an equality between individuals and corporations, and taking away from the latter a special privilege or capacity which they now enjoy, although it has been sustained by the distinguished gentleman from Philadelphia, (Mr. Biddle,) whose opinions I always receive with profound respect, appears to me to be entirely delusive. The laws now make no such distinction except as they are based upon special enactments. Those enactments are passed, and we have no further control over them; they are gone; and for the future we have established all the equality which we can establish by the section in the article on legislation to which the attention of the Convention was called by the gentleman from Allegheny this morning, and there is no necessity for inserting in this Constitution an article of legislation like this, for it is that if it be anything, or what is, in my opinion, a section which has no force, no effect and scarcely any meaning whatever. It will tend to no good, and I hope, therefore, that the section will be voted down.

The *PRESIDENT pro tem.* The question is on the eighth section.

Mr. HUNSICKER. I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

The *PRESIDENT pro tem.* The Clerk will call the roll.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Achenbach, Ainey, Alricks, Andrews, Baer, Baily, (Perry,) Bannan, Biddle, Brodhead, Broomall, Bullitt, Campbell, Curry, Cuyler, Dallas, Davis, De France, Dodd, Fell, Finney, Gibson, Gilpin, Guthrie, Harvey, Hay, Hemphill, Horton, Howard, Knight, Lear, Lilly, Long, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mott, Patton, Russell, Smith, H. G., Smith, Henry W., Stanton, Struthers, Temple, Walker, Wetherill, Jno. Price and Wright—48.

N A Y S .

Messrs. Armstrong, Bailey, (Huntingdon,) Bardsley, Bigler, Black, Charles A., Bowman, Boyd, Brown, Buckalew, Calvin, Carey, Carter, Church, Clark, Cochran, Corbett, Corson, Cronmiller, Darlington, Edwards, Elliott, Ellis, Ewing, Fulton, Funck, Hall, Hanna, Hunsicker, Kaine, Lamberton, Lawrence, Littleton, MacVeagh, Mantor, Metzger, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Stewart, Turrell, Wherry, White, David N., White, Harry, Woodward and Worrell—56.

So the section was rejected.

ABSENT.—Messrs. Addicks, Baker, Barclay, Bartholomew, Beebe, Black, J. S., Cassidy, Collins, Craig, Curtin, Dunning, Green, Hazzard, Heverin, Landis, M'Camant, Minor, Mitchell, Newlin, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Van Reed, Wetherill, J. M., White, J. W. F. and Meredith, *President*—29.

The *CLERK* read the next section as follows:

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.

Mr. EWING. Mr. President: When a new section on a new subject is incorporated in the Constitution, there should be some good and sufficient reason for it; it should be intended to remedy some ex-

isting evil, which legislation apparently will not remedy or cannot remedy, or to promote some great public good. I was absent when this article was disposed of in committee of the whole, and have been at a great loss to understand why some of the provisions reported by the Committee on Corporations were stricken out and this one left in; and in the absence of knowing those reasons, I can only suppose that the Convention must have got in the way of voting down everything at one time and voting in everything again at another time.

Now, here is a section applicable to the manner of taxation of foreign insurance companies. Why they should be selected out rather than all foreign corporations, I am unable to see; or why foreign corporations at all should be touched in this article. Has there ever been any great evil in the State from foreign companies being overtaxed? I do not believe there has been. My own belief is that our own domestic corporations have been taxed at a higher rate than the foreign corporations have, and I can see no advantage in incorporating this section in the Constitution, and I can see several reasons why this should not be here and wherein it may be found to be very disadvantageous to the State.

We can tax our own insurance companies in a great many different ways. We can tax their capital stock; we can tax their entire business; we can tax their entire receipts. We have them and their property entirely within the control of the legislation of the State, but we cannot so tax the foreign insurance companies. About the only tax we can put on them is on the business that they do in the State or a license, and this section would probably prevent the taxation of the business of a foreign insurance company, or a license for it at a higher rate than that of a domestic insurance company, leaving it free from all other taxes, and our own companies being subject to numerous taxes; and, in fact, the Legislature might under this provision be compelled either to remove the taxes on our own companies or to give the foreign companies a very great advantage. I can see no necessity for putting any such section here in the Constitution. If there be any evil in this State arising from the question of insurance that has not been met by legislation, I take it to be this, that we have had until very recently—

Mr. MACVEAGH. Will the gentleman allow me? Perhaps there is nobody earnestly in favor of this section. It is a matter of legislation purely. If there is not, we might take the vote at once. If there is I do not want to interrupt the gentleman.

Mr. EWING. It is only from the fact that it had gone through the committee of the whole that I rose to say a word. I think the only subject on which there was any doubt about the necessity of a constitutional provision was this: Heretofore the Legislature of this State has not provided for the inspection of insurance companies so as to make them safe; and I venture to say that two-thirds of the companies doing business in this State are unsafe either as life insurance companies or as fire insurance companies. They have no sufficient capital paid in. Recently there has been an act of Assembly passed which looks towards curing those matters; and I think the whole subject may be safely left to the Legislature.

Mr. WOODWARD. Mr. President: This section was put into the report of the committee at the instance of a delegate from Allegheny county. Now, another delegate from Allegheny having convinced me and the whole House that it never ought to have been put in, I trust the House will vote it down.

The section was rejected.

Mr. WOODWARD. I offer the following amendment, as an additional section:

"It shall be the duty of the Legislature to provide by general enactment that any five or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all requirements of law, form themselves into an incorporated company, with or without limited liability, as may be expressed in the articles of association, and such publicity shall be provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been subscribed."

I want the attention of the Convention for a very few minutes while I explain this subject. You are aware, sir, that our venerable friend from Philadelphia, (Mr. Carey,) the oldest man in this body, and who ought to be the wisest, and perhaps he is, was the chairman of the committee to whom the industrial interests of this

great State were referred. That gentleman made a report which was printed and which I have read attentively and carefully. That report concluded by recommending a constitutional amendment to the effect of that which I have offered. I have before me a printed copy of the very text which his committee recommended, and I am going to ask that it may be read in order that the Convention may have both before them. In drawing and submitting the section which I have offered, I did it because I preferred the phraseology which I have used to that which is in the section reported by the Committee on Industrial Interests; but they are both designed for the same purpose.

Now, what is that purpose? They are intended to introduce into Pennsylvania a principle of legislation that has long prevailed in England and in New England, and under which a vast amount of development has taken place, both in old England and in New England—the right of any number of citizens (which I have put at not less than five) to associate and become a corporation, with limited or unlimited liability as they shall agree and stipulate in their articles of association, for the purpose of prosecuting any lawful business that they may be disposed to engage in. If gentlemen will read the report of Mr. Carey they will see something of the development to which this principle has led in New England and in Great Britain; and assuredly there is reason for introducing into Pennsylvania a principle that has worked so well in those localities. We need it, for we have industries to be developed equal to theirs. True, they have been developed to a great extent; but not at all to the extent that they ought to be, and I trust will be in the immediate future.

Mr. President, we have the partnership law, which is entirely inadequate for these enterprises; we have the limited partnership law; and we have our mining and manufacturing acts of Assembly; and without going into a minute analysis of all this legislation, it is enough to say that none of them, singly or together, are adequate to the wants of Pennsylvania in this regard. If this amendment be adopted, the Legislature will be enabled to provide the people of Pennsylvania such a law on the general subject as will accomplish the results that have been accomplished under the British statutes and in several of the New England States.

Now, sir, for anything more that can be said in behalf of this amendment, I refer the Convention to the gentleman who is really responsible for the proposition (Mr. Carey.) I am in no wise responsible for it; he inspired it; I am only acting as his agent in bringing it before the Convention; and in order that the Convention may have his thought in his own language, I ask the Clerk to read the proposition as reported originally by him, and they will then choose between his language and mine, or reject both as they think proper.

The CLERK read as follows:

"The right of the people of the State to associate together for all lawful purposes, and for trading on principles of limited or unlimited liability, shall not be questioned; but it shall be the duty of the Legislature to provide by law for the organization of associations, and for securing a publicity so complete as to enable all who trade with those which adopt the limited form to become familiar with the fact that no liability exists beyond that of the joint capital which may have been subscribed."

MR. BIGLER. Mr. President: I think well of this proposition. I think it would answer the business interests of our State admirably. We have, it is true, some laws on this subject; but they are full of confusion—the limited partnership law and our mining and manufacturing laws. We need something more simple, more efficient and thorough, or rather more searching. I am inclined to favor this proposition; but I desire to suggest to the chairman of the committee an amendment which, in view of the sensitiveness that has existed on the subject, I think ought to be incorporated. I offer the following amendment, to come in at the end of the section moved by the gentleman from Philadelphia:

"Except that the stockholders shall be liable in their individual estates for all debts due to labor."

This is a subject that has been discussed for many years in Legislatures, ours and elsewhere. I am aware that the opinion is entertained by some gentlemen of large experience that the omission of this clause will be harmless, but I do not think so. The usual escape from its responsibilities is attained by by-laws which forbid entirely the creation of debts for labor. There ought to be no such thing in any corporation or association for ordinary business purposes. They ought to make provision for prompt payment for labor;

every week I prefer to a longer time. So far as I have had any connection with organizations of this kind, I have insisted on that kind of payment of labor. I do not think the clause would be restrictive.

MR. MACVEAGH. I should like to know if the gentleman does not think that the preferences already given by the general law to laborers is amply sufficient in that regard. It gives them, in case of the inability of a company, corporation, or individual in this State to pay its debts, a preference now to the extent of two hundred dollars of back wages.

MR. BIGLER. I am aware of that large protection; but this refers to a new system; this has reference to a law which shall spring out of this provision.

MR. MACVEAGH. But those laws will still apply.

MR. BIGLER. Those laws will apply if they are not repealed; but they may to some extent be superceded by the law which will grow out of this provision.

MR. CAREY. MR. President: The proposition contained in the article reported by the Committee on Industrial Interests is somewhat different from that offered by the gentleman from Philadelphia; and for myself I prefer it, for the reason that I think it more properly goes into the Constitution. It is a declaration of a right, with an instruction to the Legislature to carry that right into effect, whereas, the other is legislation. Nevertheless I accept with great pleasure the section just exactly as my friend (Mr. Woodward) has proposed it, and am perfectly willing to agree to it. What I want to see established is the right of the people to associate and to so associate freely. The grand difficulty in this State has been throughout, the imposition of liabilities of every sort and kind, by which capital has been driven and forced out of the State. Now, labor and land need to invite capital; and all these restrictions that are put, like the one that my friend from Clearfield has just presented, have a tendency to prevent people abroad from taking an interest in our improvements. Two years ago the Legislature passed an act by which the liability was restricted to the property of the company, and I believe that is all we want in the interest of labor for the purpose of bringing capital to the aid of labor. That is what I believe we ought to do; we ought to leave the law just as it stands now on the statute book.

No man likes to become a member of a concern where he is liable to be called upon for contributions over and above those which he has agreed to make. We have been piling one restriction upon top of another, and in preparing the report referred to I had occasion to look at our various laws; and from year to year they have been changed and twisted and turned until it seemed to me almost that it would require half a dozen Philadelphia lawyers to understand what a man's real liabilities were as a member of a corporation. Now, in the English law there is no liability of any sort or kind beyond the property of the company. But there is nothing in this proposition connected with that. That question is for the Legislature. All I want to see established is the right of two, three, five, ten or twenty people to come together and do business on such terms as they may agree with their neighbors. Nobody will doubt for a moment that my friend and I might come together and agree to be responsible for ten or twenty thousand dollars apiece, provided we got all the people to come and write their names down and agree to it; but that would be very troublesome. The English law has done very much better. The English law says that the word "limited"—and that is what we ought to do—shall in all such cases be the last word in the name of the company. No man doing business with them can ever doubt the fact that he is dealing with persons subject to a limited liability. Going to its office the word "limited" stares him in the face. He gets a note, a bond, a bill of lading, or anything of that company, and there is the word "limited." He is cautioned that there is a limitation; and it is his duty, his business, to take care of himself. Now, the more you require people to take care of themselves and think for themselves, the better. In all the charters we grant, a large portion of the people imagine that the Legislature has done something to take care of them, and consequently they do not take care of themselves; but the moment we provide that in all cases the word "limited" shall be used in the title of these companies, no man can make a mistake, and every one will take notice. All that is left for the Legislature. What is provided by either of these articles is the declaration of the right of the people to associate, and I believe that the adoption of this section will be of more use to the State than almost anything else this Convention can do. It

will do more towards bringing capital into the State, towards aiding in developing our resources than almost anything we can do.

Look around in this city and see how many hundred people there are who are now in subordinate positions who are perfectly capable of being heads of establishments. They have not money, but if they could go around to half a dozen men who know them, and say "here, I want you to give me a thousand dollars apiece and I will make ten or twenty thousand for you," there is no difficulty, they can get plenty of money. But the difficulty is not only with the small people, but with the large ones. The owner of one of the largest chemical establishments in this city said to a friend of mine, "we could double and treble our business if we had capital, and if we had limited liability we could have all the capital we want." I know it. These difficulties in our laws now are so great that we need some one principle established that will put an end to them.

Now, as regards these two propositions, I am entirely indifferent which is accepted. They both have the same effect; but I prefer my own for the simple reason that as a declaration of right it is better in my opinion than the other, which is legislation.

Mr. STEWART. I move to amend by striking out all in the first line—

The PRESIDENT *pro tem*. There is an amendment to the amendment pending, which is that offered by the delegate from Clearfield (Mr. Bigler.)

Mr. BIDDLE. I wish to say a few words on this proposition. More than thirty years ago the Legislature of this State, having in view the propriety of allowing persons to associate together with limited liability, passed the statutes which we find in our digest of the laws of the State under the head of "Limited Partnership." From time to time various amendments have been made to the original act of 1836. The principle of that act was this: That a man of capital might embark his whole, or so much of his capital as he desired, in any commercial enterprise, without incurring a greater liability than the sum staked by him—a principle certainly very wise and very adaptive to the interests of this country, and of this State in particular, with its very varied classes of interests. It was found, however, in consequence of many of the provisions by which it was hedged, that it was only ap-

plicable to a very limited class of cases; indeed it never had anything like a very general trial. For instance, a provision which is found in the original law and which still remains is to this effect: That while the special partner, (that is the limited partner; the man who put in a specific sum beyond which, theoretically, he was not to be liable,) might advise as to the management of the business, he should transact no business on its account, nor be employed for that purpose as agent, attorney, or otherwise; and if he interfered contrary to this provision he was to be deemed a general partner; that is to say, the effect of this limitation was that the old, retired merchant or manufacturer of vast business experience and ability was practically prevented from interfering at all in the management of the concern; and while he might have twenty, thirty, forty, or fifty thousand dollars at stake under the language of this act, if he interfered beyond advising—and it was difficult to say how far he might go in that direction—he made himself liable generally. This was found to be a great defect. It was tantamount to saying, "you may enter into a special or limited partnership; but if you give your experience, if you give to the firm the benefit of the enlarged business views you have been for many years acquiring, if you interfere at all, you shall become a general partner." This was found to be a very serious evil; and twenty-five years ago the British government, looking to the importance of allowing persons to embark in any enterprise no matter what its character was, established this principle of limited associations, which were nothing more than partnerships in which the liability of each partner was fixed in advance, so that the whole world might know precisely how he was dealing. From time to time we endeavored to apply this principle to mining and manufacturing associations; but owing, as the chairman of the Committee on Industrial Interests has shown, to the very complicated and sometimes inconsistent provisions of the law, it did not tempt capitalists to embark in the way they should. Instead of the small dribbets of capital which are invested in savings funds and in other institutions at low rates of interest being used to foster and develop the large interests of the State, they were practically locked up.

Now, this proposition comes before the Convention recommended by the experience of more than a quarter of a century

in a country which is eminently practical. It comes before this House recommended by a principle which we adopted nearly forty years ago, but which, unfortunately, we placed in a condition in which it could not work. It says in effect that you may make partnerships to any extent you like, putting in just such sums as you like, restricting the liability to the sum originally embarked, provided you forewarn the whole community that your liability shall not be beyond the sum placed in, by adding at the end of the name of the association, and probably by adding on all the business announcements of the association, the bill heads, the promissory notes, the engagements, and all the different classes of paper which they emit, the same principle of limited liability. I can imagine, after having read with some attention the very able report of the chairman, (Mr. Carey,) giving as it does the experience of Great Britain now for more than a quarter of a century on this subject, an experience which has led them to expand rather than to contract the whole system, nothing more valuable; and I trust, therefore, that we shall be allowed to try it unhampered at all.

While I am not at all unmindful of the claims of the laborer for his wages, yet I wish to start this principle entirely untrammelled. There is no more danger of the laborer being deceived, if he is employed by a partnership of this limited liability than of anybody else being deceived. It is difficult sometimes precisely to discriminate between different classes of laborers. The amendment of the gentleman from Clearfield, it seems to me, would be going a great deal too far. "Provided," he says, "that individual liabilities shall apply to labor." Now, what is labor? An associated company like this buys, if you please, a steam engine from a firm which embarks in that kind of business. When you say that labor shall be a specific charge upon all the property of the association, as well that which is specially placed in the firm as that which they have outside and beyond it, you mean the whole labor which makes the machine valuable, you mean everything over and above the mere crude material that is employed in the manufacture. I apprehend that the gentleman does not intend to go so far. He probably would confine his provision to the mere wages of labor, although he does

not say so, and if we are to pass it it ought to receive that limitation.

I, however, for one, would be disposed to give this system—knowing that advantages have resulted from it for more than a quarter of a century abroad; knowing the success it has there obtained; knowing that instead of hampering it abroad they are giving it greater development and expansion—a fair trial here, and I am disposed to vote for it as it is found in the original provision. I trust that this Convention, mindful of the powerful arguments which have been presented in support of the provision contained in the report of the Committee on Industrial Interests, which I trust has been read substantially, if not absolutely, by every member of the Convention, will allow this provision to be adopted precisely as it is, as a declaration of the right of the people of this State to associate together for all lawful purposes, whether associated on principles of limited or unlimited liability.

Mr. MACCONNELL. Will the gentleman permit me to interrupt him.

Mr. BIDDLE. Certainly.

Mr. MACCONNELL. Why confine it to associations of five or six? Why not extend it universally?

Mr. BIDDLE. The gentleman is referring to the article as presented by the learned chairman of the Committee on Private Corporations. I am referring to the article originally reported by Mr. Carey, of Philadelphia, as the chairman of the Committee on Industrial Interests and Labor. I will read it to show that it contains no limitation.

"The right of the people of the State to associate together for all lawful purposes, and for trading on principles of limited or unlimited liability, shall not be questioned; but it shall be the duty of the Legislature to provide by law for the organization of associations, and for securing a publicity so complete as to enable all who trade with those who adopt the limited form to become familiar with the fact that no liability exists beyond that of the joint capital which may have been subscribed."

I prefer this article, because, as was so well said by the gentleman from Philadelphia, the chairman of the Committee on Industrial Interests and Labor, when he spoke a little while ago, it is a declaration more suitable to the organic law. It merely starts out with the enunciation of the great principle of allowing people,

provided the public is sufficiently cautioned in advance, to deal on the limited principle, and gathering into one heap all their little hoards of capital, to foster and promote the general interests of the community, leaving to the Legislature afterward the laying down from time to time of such restrictive clauses as in their wisdom may seem best.

I trust, therefore, the section will pass in this shape. Of course, in saying this, I do not wish in any way to trench upon the understanding which seems to exist between the chairman of Industrial Interests and Labor and the chairman of the Committee on Private Corporations. I merely indicate my preference. If the gentleman who has this subject so much at heart is willing that the article should be presented in the shape in which it comes from the Committee on Private Corporations, so be it. I am merely indicating my preference between the two plans. I think, for instance, that it is wiser not to put into the organic law any condition as to the number of associators. As was well asked by the gentleman from Allegheny, (Mr. MacConnell,) why not extend it to three as well as five? I can see no reason why it should not be so. I would go for the smallest possible number. I would go for no restrictions of any kind except so thorough a caution, in advance, to all who deal with the association when formed, that they may be said to have fairly become familiar with the fact, in the language of the original article, that "no liability exists beyond that of the joint capital which may have been subscribed." I trust, therefore, that the article will be adopted in this shape.

Mr. BIGLER. I desire, with reference to my amendment, to say that I intended it simply to apply to the wages of labor, but as I am exceedingly interested in the question, and desire to have this measure untrammelled, I will withdraw the amendment.

Mr. AINEY. I now move to amend by inserting after the word "persons," the words "a majority of whom are."

Mr. CUYLER. If the gentleman would enlarge that amendment by striking out the words "five or more," so that it would read "any persons, of whom a majority are citizens of this Commonwealth," I think his amendment would be in better shape.

Mr. AINEY. I think that would be an improvement, and I therefore modify my amendment accordingly.

Mr. WOODWARD. I have no objection at all to these suggestions if they will recommend the subject to gentlemen. But allow me to say that the original amendment was most carefully prepared. Our mining law mentions "five," and we are all familiar with the Pennsylvania mining law, and therefore this number was selected as the limit for an association. One of the great objects of this provision is to encourage the laborer to become a partner with the capitalist in the prosecution of a common enterprise, and that would be a curious enterprise in which the capitalists and the laborers did not amount to five. There is no good reason why the number should not remain at five. In my opinion, five is exactly the right number. I do not think the Legislature ought to be called upon to incorporate companies of less than five capitalists and laborers. The probability is that in process of time these gentlemen will act generally upon that principle, and the number will be largely increased instead of ever presenting any necessity for its being reduced. However, I have no feeling about five or more. I only believe it would be unwise to make it less.

Mr. KATNE. Will the gentleman from Philadelphia allow me to make a suggestion?

Mr. WOODWARD. Certainly.

Mr. KATNE. I suggest that you strike out the word "enactment" and insert the word "law" so that it would read: "It shall be the duty of the Legislature to provide by general law."

Mr. WOODWARD. Oh; that is hyper-criticism. [Laughter.]

Mr. AINEY. I desire to say that my object in moving this amendment is to require only a majority of the persons associating themselves together in business to be citizens of this Commonwealth. I would allow the benefits of this provision to be extended to people of other States, so as to allow citizens of New Jersey or New York, or any other Commonwealth, or of any other country, to come in here and use their capital for the development of our resources.

Mr. DODD. The question has arisen whether the benefits of this article could not be applied to two as well as to five. I would like to ask why it should not be applied to one as well as to two. In other words, sir, why should corporations or associations have greater rights than individuals? That they should not have has been the principle for which I have labor-

ed and voted since I took my seat in this Convention, both as a member of the Committee on Private Corporations and as a delegate on this floor. I consider it only fair and right that individuals should have under the law the same liberties and privileges that are allowed to corporations. If this principle of limited liability should be applied to associations then it should be applied to individuals; and if it will not bear that test there is something wrong about it. If two or five men who desire to put capital together and start an iron mill have the right to limit their liability by so stipulating in their articles of association, why have I not that right as an individual if I want to enter into the same enterprise? What right have five men, associated together, to have a principle applied to them as to their liability which should not be applied to me as an individual operator in the same business?

Individuals have or should have the same rights, in entering into business, as associations or corporations. If men associated together so conduct their business that they can have no losses above a certain sum there is no necessity for this section; but if they so transact their business that there will be losses above the sum to which their liability is limited, that loss must fall on some one, and the simple question to be tested here is whether the loss shall fall upon those who contracted the debts or upon those who trusted the association, "not wisely but too well?"

The unlimited right to associate together is already granted by the sections adopted. We have required the Legislature to pass general laws and have prohibited it from incorporating any company by special law. In enacting that general law the Legislature may fix a limited or unlimited liability as it sees fit. But this experiment had better be left to the Legislature. Let it experiment on the subject, and if it does wrong it can correct it by speedily changing the law, which we cannot do.

It is argued that this favors the association of capital. Capital will always associate itself together whenever the business is safe, and if it is not safe let the capitalists suffer and not the laborer. I object to this section because it is a dangerous experiment and because it is class legislation in favor of capitalists. It cannot favor laborers to any great extent. It will rob them of their labor on one

hand, and on the other will induce them to enter into dangerous associations which will rob them of their little capital.

If this is a rule proper to be applied to individuals I will consent that it be applied to associations of two or more individuals. I am in favor of putting everybody on the same level, whether laborers or capitalists, whether individuals or association of three or more individuals make all liable in the same manner, give all the same rights, make no distinctions whatever. I hope that no such dangerous experiment as this will be adopted here. Let the Legislature do as it sees fit in regard to this matter. If it makes mistakes it can correct them. If we make mistakes they will last for years.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lehigh (Mr. Ainey.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. STEWART. I move to amend by striking out all of the first line and inserting before the word "subscribed," the last word in the section, the words "invested or," so as to read, "joint capital which may have been invested or subscribed."

The purpose of this is to leave it simply as a declaration of right. The amendment as offered provides that it shall be the duty of the Legislature to provide by general enactment so and so. The amendment I have proposed, if adopted, leaves it simply a declaration of right and in constitutional form, as I think.

SEVERAL DELEGATES. Let the amendment be read.

The PRESIDENT *pro tem*. The clause will be read as it will read if amended.

The CLERK proceeded to read as follows:

"Any five or more"—

Mr. STEWART. "Any two or more." It is so in the original I used, and it should read, "any two or more." I include that in my amendment.

The CLERK. The clause will then read:

"Any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all requirements or law, form themselves into an incorporated company, with or without limited liability, as may be expressed in the articles of association, and such publicity shall be

provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been invested or subscribed."

The amendment was agreed to.

Mr. DALLAS. I move to amend by adding after the word "know," on the next to the last line, the words, "the amount of capital subscribed and," and striking out all after the word "that," in the same line, and inserting "amount," so that it will read:

"And such publicity shall be provided for as shall enable all who trade with such corporations as adopt the limited liability to know the amount of capital subscribed, and that no liability exists beyond that amount."

My amendment extends only to this purpose: That in addition to the publicity of the fact that no liability exists beyond the amount subscribed, publicity shall also be given of the amount subscribed, so that every person dealing with the corporation shall know not only that its liability is limited to its capital, but what its capital at the outset was. That does not require extended argument, in my opinion, but a simple statement, and I leave it to the Convention.

Mr. DARLINGTON. Allow me to suggest to the gentleman from Philadelphia to put in the word "invested" instead of "subscribed."

Mr. DALLAS. Well, put in "invested or subscribed."

Mr. DARLINGTON. There is no more fruitful source of fraud than just that one thing. Insurance companies and companies of every kind say "subscribed capital," so much. But what I want is invested capital paid in.

Mr. WOODWARD. They are liable for all they subscribe. What larger measure of liability can you have? Whether they have paid it in or not, if they are responsible for what they subscribe, you have the very largest liability.

Mr. DARLINGTON. I want the largest.

Mr. KNIGHT. The subscriptions may be made by irresponsible parties, and you cannot hold them liable.

Mr. FELL. "Subscribed and paid."

Mr. DARLINGTON. "Subscribed and paid" is better.

Mr. MACVEAGH. That weakens it; that prevents their being responsible for the stock not paid.

Mr. WOODWARD. If gentlemen would have a little confidence in their own language, they would find that the largest liability is expressed when you say they shall be liable to the extent of the stock subscribed.

Mr. FELL. I would rather have any man's money than his subscription, I do not care who he is.

Mr. CAREY. In all these cases it is provided that the stockholders shall be liable for the whole amount subscribed. That is the extent of their liability. They may have paid ten per cent. or twenty per cent. or fifty per cent., but they must pay up to the last dollar as the measure of their liability. It seems to me the whole ground is covered by the words used here; and all these changes weaken it rather than strengthen it.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Dallas) to the amendment.

The amendment to the amendment was rejected.

Mr. CUYLER. I move to amend by striking out in the third and fourth lines the words "of association and complying with all requirements of law," and inserting the words "expressing the conditions and purposes of their association," so that it will read:

"Any five or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles expressing the conditions and purposes of their association, form themselves into an incorporated company," &c.

My object in the amendment is simply this:—

Mr. CAREY. I accept it.

Mr. CUYLER. My venerable friend (Mr. Carey) permits me to say that he approves the amendment. My object in it is chiefly this: The use of the words "and complying with all requirements of law" has a tendency to clothe the Legislature with a power which may practically destroy the value of the section. They may prescribe so many conditions and limitations, and of so difficult and obscure a character, that the value of the law would be practically taken away. Now, my own estimate of the value of this provision is that there is nothing which this Convention has acted upon which is more important to the development and prosperity of the State than this very section; and that it is founded upon a wise thought, because I think the

thought that underlies this section is simply that those who deal with corporations are put on their guard and are taught that they are to rely on the character, and the integrity, and the standing of the men who control them, rather than upon enactments of the Legislature, which are after all but deceptive traps that lead to destruction.

I do not believe that any of those laws which have been from time to time passed, which were intended to provide special protections for laboring men and for the humbler classes of men, have amounted to anything else than mere delusions which have led them to their destruction, and I think the thought that underlies this is therefore wise and prudent.

Mr. WHERRY. It strikes me that the amendment offered by the gentleman from Philadelphia goes much further than perhaps he is aware of. The words to be stricken out are, "of association and complying with all requirements of law."

Mr. CUYLER. The gentleman will pardon me, I propose to follow it up by another amendment adding, in the third line from the end, after the words "provided for," the words "by law."

Mr. WHERRY. That meets the objection I was about to make.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia.

Mr. WHERRY. I still think this amendment is objectionable. It is putting in the power of this association to lay down the conditions upon which this notice shall be given.

Mr. CUYLER. Not at all.

Mr. WHERRY. Clearly so, to express the conditions and purposes of the association.

Mr. CUYLER. The gentleman will pardon me—

Mr. WHERRY. It certainly gives the very widest door for fraud.

Mr. CUYLER. Will the gentleman pardon me for calling his attention to the subsequent clause: "Such publicity shall be provided by law." The publicity shall be provided for by law.

Mr. WHERRY. Yes, the publicity is to be provided for by law; but still the conditions and purposes for which that association was formed may be concealed under words and phraseology, in the articles of agreement and association, so as to blind the public as to what the purpose and condition are. Now, I claim that the Legislature shall exercise a supervision over these articles of association so as to

declare on what conditions these associations shall be formed.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Cuyler.)

The amendment was rejected, there being on a division, ayes thirty-seven, noes forty-six.

Mr. ARMSTRONG. Mr. President: I have very strong sympathy in the purposes proposed to be accomplished by this amendment. I believe that the material interests of the country have largely outgrown the capabilities of merely private capital, and that there are vast interests of the county which require associated capital to accomplish them in their best form, and to meet the necessary competition of other States and other interests.

I propose an amendment to the section which I believe preserves all that is valuable, and will strike at much that I think is of no importance. In the first place, I do not like that form of expression in a Constitution which simply provides that it shall be a duty of the Legislature to do so and so. I prefer that the expression of the Constitution shall be imperative, so that the amendment I propose will read thus:

"The Legislature shall provide by general law that any five or more persons, a majority of whom shall be citizens of this Commonwealth, may form themselves into an incorporated company, with or without limited liability, as may be authorized by law and expressed in the articles of association; and such publicity shall be required as shall enable all who trade with such corporations who adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been subscribed."

I have no objection to making it "three or more" if gentlemen desire.

Mr. STEWART. I think any language that is directory on the Legislature is objectionable. I think the best possible shape to put this in, is to make it the declaration of a right. Now, the proposition of the gentlemen from Lycoming just offered requires the Legislature to pass a general law for this very thing. It would be a great deal better simply to make it a declaration of right on the part of the individuals. Let it read: "That any two or more persons, citizens of this Commonwealth, or a majority of whom shall be citizens of this Commonwealth,"

shall have a right to do so and so. That is preferable, I think.

Mr. MACVEAGH. I move to amend the amendment by striking out "five" and inserting "any citizens of this Commonwealth."

The PRESIDENT *pro tem*. This is an amendment to an amendment.

Mr. MACVEAGH. I trust then the mover will modify it. We voted that in on the amendment proposed.

Mr. EWING. I trust the gentleman from Lycoming will not modify it so as to make it less than five. That is a small enough number to be allowed to go into any association of the sort. One of my principal reasons for allowing five or more to go into such an association would not apply to a smaller number. Ordinarily, where there are but two or three, they can give the business a personal supervision and should be responsible.

Mr. WOODWARD. Mr. President: I hope the House will understand that the amendment of the gentleman from Lycoming leaving it to be provided by law will bring special legislation into each one of these corporations. Now, the amendment as originally drawn intended to exclude that. The gentleman's amendment as expressed will introduce special legislation.

Mr. ARMSTRONG. If the gentleman is correct in his criticism, I shall certainly desire that it should be amended, for I do not wish that there should be special legislation in the case; but it is to be observed that the first clause requires that the Legislature shall provide by general law and the second clause where it speaks of "being provided by law" is in subjection to the first, which requires that it shall be a general law; but if there be any doubt about it, I have no objection to making the proper modification.

Mr. WOODWARD. The introduction of the second clause has reference to the liability, limited or unlimited, as the Legislature shall direct. That defeats the very object.

The PRESIDENT *pro tem*. The Chair would call the attention of the delegate from Lycoming to the fact that the first line of the original amendment has been stricken out by the motion of the delegate from Franklin.

Mr. ARMSTRONG. But I am offering an amendment now which stands by itself.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lycoming.

Mr. H. G. SMITH. Mr. President: I have paid some attention to this question; and as the debate has gone on my mind has reached the firm conviction that this Convention ought not to give power to do what is asked in either one of these propositions. The power to go as far in that direction as the wants of this Commonwealth demand exists already in the Legislature, and it can be exercised by the Legislature from time to time as the interests of the Commonwealth demand, and will no doubt be so done.

There was much force in the argument urged by the gentleman from Venango, (Mr. Dodd,) and it must be remembered that in this day of ours throughout this Commonwealth, individual enterprise is called upon to make what seems to be fast becoming a hopeless fight against combined capital. I am opposed, not to the Legislature going as far as it may be proper from time to time in this direction, but I am certainly opposed to putting any imperative requirement of this kind in the Constitution and saying in the fundamental law that the Legislature shall provide for associations of a certain kind with certain privileges. Having come to that conclusion, I shall vote against both these propositions in the shape in which they are presented, or either one of them; and I think if the members of the Convention will reflect seriously on this question, they will be perfectly willing to leave this matter in the hands of the Legislature, feeling assured that coming from the people from year to year as it does, it will provide for the material interests of the Commonwealth and go as far in this direction as may be necessary.

The PRESIDENT *pro tem*. The question is upon the amendment of the delegate from Lycoming (Mr. Armstrong.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. HUNSICKER. I rise to ask the gentleman who is the author of this section whether by this section the joint assets of the corporation are liable for all the debts, or whether it limits the liability to the joint capital subscribed, because I think if it is not included, an amendment of that kind should be added, so that the entire assets of the corporation shall be liable for its debts.

Mr. WOODWARD. The liability is to be measured by the subscription, by the amount subscribed. Each stockholder is

to be liable for the debts of the company to the extent of the stock subscribed.

Mr. HUNSICKER. What is to become of the surplus capital?

Mr. BIDDLE. The word "invested" includes that.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Woodward) as amended.

Mr. EDWARDS. I call for the yeas and nays.

The yeas and nays were ordered, more than ten members rising to second the call.

Mr. TEMPLE and others. Let it be read.

The PRESIDENT *pro tem*. The amendment as amended will be read before the yeas and nays are called.

The CLERK read as follows:

"Any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all the requirements of the law, form themselves into an incorporated company with or without limited liability as may be expressed in the articles of association, and such publicity shall be provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been invested or subscribed."

The question was taken by yeas and nays, with the following result:

YEAS.

Messrs. Armstrong, Baer, Baily, (Perry,) Barclay, Biddle, Bigler, Bowman, Boyd, Brodhead, Broomall, Bullitt, Calvin, Carey, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Darlington, Dunning, Edwards, Ellis, Ewing, Fell, Finney, Fulton, Guthrie, Hemphill, Horton, Howard, Hunsicker, Knight, Lear, Lilly, MacVeagh, M'Clean, M'Culloch, Mann, Mantor, Newlin, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Read, John R., Reed, Andrew, Runk, Russell, Smith, Henry W., Stanton, Stewart, Struthers, Temple, Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, Harry, Woodward and Wright—68.

NAYS.

Messrs. Ainey, Airicks, Andrews, Bailey, (Huntingdon,) Bannan, Black,

Charles A., Brown, Buckalew, Church, Clark, Davis, De France, Dodd, Elliott, Funck, Gibson, Gilpin, Hall, Harvey, Hay, Kaine, Lamberton, Lawrence, Long, MacConnell, M'Murray, Metzger, Minor, Mott, Niles, Parsons, Patton, Purman, Purviance, John N., Smith, H. G. and Worrell—38.

So the amendment as amended was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Campbell, Cassidy, Collins, Craig, Cuyler, Dallas, Green, Hanna, Hazzard, Heverin, Landis, Littleton, M'Camant, Mitchell, Purviance, Samuel A., Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Van Reed, White, J. W. F. and Meredith, President—31.

Mr. FUNCK. I offer the following amendment as an additional section:

"The Legislature shall take immediate steps to annul all charters heretofore granted to individuals and corporate bodies, with banking and discounting privileges, other than banks of issue, but this power shall be so exercised as to do no injury to corporators; and hereafter the Legislature shall confer such privileges only upon banks of issue.

Mr. President, I have myself very decided opinions upon the subject-matter covered by this amendment. Under the twenty-sixth section of the article on the Legislature in the Constitution of 1838, with the amendments, it will be found that the Legislature has authority to revoke the privileges conferred upon corporations for these and other purposes. This is a direct blow at the "dime savings institutions" and "banks of deposit" that have been springing up all over the State. I have heretofore had occasion to advert to this matter, and I now bring it before the Convention in a specific form, so that the sense of this body can be ascertained on this question. I believe that the interest of the community requires that these institutions should be wound up, and for the purpose of bringing about this end I have submitted this section as an amendment. It will be observed that, if it be adopted, it will take from the Legislature all authority in the future to create institutions of this character.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lebanon (Mr. Funck.)

The amendment was rejected.

Mr. HARRY WHITE. I offer the following as an additional section:

"The Legislature shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any hereafter to be conferred by or under any law, whenever, in their opinion, it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation."

This is the identical section which I offered yesterday, and the section of the present Constitution with a saving clause in it. The only difference from the old Constitution is that the amendment of 1857 allows the Legislature to alter, revoke or annul charters of corporation hereafter granted, and I do not want the Legislature to lose the power over the acts of incorporation passed between 1857 and 1838. Hence the words "now revocable."

Mr. MACVEAGH, I trust the proposition will be adopted.

The amendment was agreed to.

Mr. WOODWARD. I offer the following amendment and ask gentlemen to give me the yeas and nays without saying one word upon it:

"No suspension of specie payments shall be permitted or sanctioned by law."

I ask for the yeas and nays on it.

The yeas and nays were ordered, more than ten delegates rising to second the call.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on this amendment.

The yeas and nays were taken and resulted as follows:

Y E A S.

Messrs. Baer, Bannan, Church, De France, Ellis, Gilpin, Guthrie, Harvey, Hemphill, Kaine, Long, M'CLean, M'Murray, Metzger, Smith, Henry W., Wherry, Woodward, Worrell and Wright—19.

N A Y S.

Messrs. Ainey, Alricks, Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Clark, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Darlington, Davis, Dodd, Edwards, Elliott, Ewing, Fell, Finney, Fulton, Funck, Gibson, Hall, Horton, Howard, Hun-

sicker, Knight, Lamberton, Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'Culloch, Mann, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Russell, Stanton, Stewart, Struthers, Turrell, Walker, Wetherill, John Price, White, David N. and White, Harry—77.

So the amendment was rejected.

ABSENT. — Messrs. Achenbach, Adicks, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Boyd, Cassidy, Collins, Craig, Cuyler, Dallas, Dunning, Green, Hanna, Hay, Hazzard, Heverin, Landis, Littleton, M'Camant, Mitchell, Pughe, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Temple, Van Reed, Wetherill, J. M., White, J. W. F. and Meredith, President—37.

Mr. T. H. B. PATTERSON. I wish to call the attention of the Convention for a single moment to the fact that the twenty-fifth section of the present Constitution was reported as section thirty-two of the article submitted by the Committee on Legislation and was stricken out with the understanding that it was to go into the article on corporations. Section twenty-five provides for six months' advertising for applications for banking privileges, limits the bank charters to twenty years and provides that they shall always be revocable at the pleasure of the Legislature. In accordance with what was the understanding at the time this section was before the Convention, I now offer section twenty-five of the present Constitution as a new section of this article.

The PRESIDENT *pro tem*. The new section will be read.

The CLERK read as follows:

"No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges, without six months' previous public notice of the intended application for the same in such manner as shall be prescribed by law, nor shall any charter for the purpose aforesaid be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done

to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation."

Mr. MACVEAGH. I would like to suggest to the gentleman that he strike out the revocable clause. We have just passed it in express terms in the amendment of the gentleman from Indiana.

Mr. T. H. B. PATTERSON. I am satisfied to withdraw that part of the section, if it has been passed before. This section is one that I think the Convention ought to retain. It provides for matters that we have not provided for in any other section or article. It was stricken out of the report of the Committee on Legislation by the committee of the whole, with the understanding that it would be re-inserted in the article on corporations. Instead of reporting this section the Committee on Corporations reported another section, in a very different form from this one, which was also voted out in committee of the whole. The section ought now to be introduced. It was reported by the Committee on Legislation as necessary in addition to all the other restrictions which have been put in. At least the substance of this section ought to be here preserved. If delegates wish to amend the language of the old Constitution that is another matter, but I move to insert it here in order that the Convention may vote, fairly and squarely, whether they will retain this section or not.

Mr. HARRY WHITE. I move to amend by striking out all after the word "years."

The PRESIDENT *pro tem*. The Clerk will read the part proposed to be stricken out.

The CLERK read as follows:

"And every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same whenever in their opinion it may be injurious to the citizens of the Commonwealth; in such manner however that no injustice shall be done to the corporators."

Mr. HARRY WHITE. We have just reserved to the Legislature the power to alter or revoke any charter granted under any law whatever. That was done by the adoption of my amendment, and that meets the entire situation. If my amendment now be adopted, it will leave the section read:

"No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges, without six months' previous public notice of the intended application for the same, in such

manner as shall be prescribed by law. Nor shall any charter for the purpose aforesaid be granted for a longer period than twenty years."

This is almost an exact transcript of the present Constitution in this regard, and the propriety of some provision of this kind must be manifest to every member of the Convention. There is nothing in which the business public is so much interested as in the laws providing for the charter of banking institutions. Undoubtedly we shall have a general banking law authorizing the creation of banks of discount and savings institutions, and it is only right that the public shall be advised by an extended advertisement of an intended application for a charter, and of the terms of the association of the persons who are to be thus associated. That is just what this provides.

Mr. LILLY. If I heard this amendment read aright by the gentleman from Allegheny, it was one which was tacked on in the committee of the whole to the report of the Committee on Corporations and after a full discussion was voted down, or at least a portion of it was. That was that no corporation should extend over twenty years. It was discussed very thoroughly, understood fairly and deliberately voted down. The article that was rejected in the report of the Committee on Corporations said that all corporations except railroads, canals, turnpikes, &c., should expire at the end of twenty years. It was shown then that there were other corporations, besides railroads and canals, which would be greatly injured by stopping their chartered privileges at the end of twenty years. If this amendment, which I heard imperfectly when it was read, applies only to banks, I have no objection to it. If it is intended to reach the case of other corporations, I am entirely opposed to it.

Mr. HARRY WHITE. The gentleman from Carbon will observe that it applies only to banking institutions.

Mr. LILLY. Then it is all right.

On the question of agreeing to the amendment proposed by Mr. Harry White, a division was called for, which resulted sixty in the affirmative and ten in the negative. So the amendment was agreed to.

Mr. STEWART. I desire to say that I never saw any occasion for the introduction of this section into our Constitution, in view of the fact that we have already restricted the Legislature from granting

any charters in the manner indicated by this amendment. We have provided for general laws; all these charters must be granted by general laws. On reference to section ten of the article reported by the Committee on the Legislature, line forty-five will be found to read as follows:

"The Legislature shall not pass any special or local law creating corporations or amending, renewing or extending the charters thereof."

It would seem to me incongruous to introduce this amendment now in view of the action taken by the Convention on this section of the article on legislation.

Mr. HARRY WHITE. If the gentleman will allow me I will explain—

Mr. STEWART. Certainly.

Mr. HARRY WHITE. The statement of the delegate is perfectly correct, but the section to which he has referred does not contain the prohibition that it is intended shall be given by this section now under consideration. That is intended to prevent any special law being passed to create or extend the charter of any corporations. This present section applies only to banks and corporations of discount, and simply provides that notice shall be given to the public of the manner in which their organizations shall be effected. Even suppose the provision does exist, there must be an organization under the general law, and this requires a publication of the intended application and all the details thereof. These are necessary for the protection and the information of the public.

Mr. STEWART. Then if that be so, the phraseology of the section is certainly unfortunate, and it ought to be modified.

Mr. HARRY WHITE. If the gentleman from Franklin will read the section carefully, he will see that it is all right.

Mr. MACVEAGH. Oh, yes, it is all right.

Mr. BUCKALEW. I desire to inquire whether the limitation is three months or six.

The PRESIDENT *pro tem*. It is six months.

Mr. BUCKALEW. Then I move to strike out "six" and insert "three."

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is on the amendment as amended.

The amendment as amended was agreed to.

The PRESIDENT *pro tem*. The article is concluded. The question is, shall it be transcribed for third reading?

Mr. WOODWARD. Before that vote is put I wish to offer an amendment that I have not yet had the opportunity to offer.

The PRESIDENT *pro tem*. The Chair will receive the amendment.

Mr. WOODWARD. I offer this amendment as a new section:

"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 committee introduced that section into their report, desiring it to stand at the head of this article; but the Convention in committee of the whole struck it out. A question arose in debate afterward as to what would be a corporation under the provisions of this article and what would not, showing the necessity of defining what shall be held by the courts to be corporations. I propose to put it in here. It is entirely harmless. It encounters no man's prejudices. It is a rule for the courts. It makes all these associations corporations for all these purposes, and I can see no possible objection to putting it in; and if it is put in I hope the Committee on Revision will put it at the head of this article. That is all I have to say.

The amendment was agreed to.

Mr. MOTT. I offer the following amendment as a new section:

"That no incorporated company organized for mining purposes or possessed of mining privileges shall own, hold or possess the soil or surface right of more than one thousand acres at any one time, exclusive of lands held for the right of way for railroad purposes, by due appropriation of law."

I ask for the yeas and nays.

More than ten members rising to second the call, the yeas and nays were ordered and taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Bailey, (Huntingdon,) Bigler, Black, Charles A., Buckalew, Campbell, Cochran, Dodd, Ewing, Finney, Funck, Gibson, Gilpin, Guthrie, Howard, Kaine, Long, M'Culloch, M'Murray, Metzger, Mott, Palmer, G. W., Patterson, D. W., Porter, Purman, Russell, Simpson, Smith, H. G., Smith, Henry W., Stewart, Temple and Turrell—33.

NAYS.

Messrs. Ainey, Baer, Bailly, (Perry,) Bannan, Barclay, Biddle, Bowman, Boyd,

Brodhead, Broomall, Brown, Bullitt, Carey, Carter, Church, Corbett, Cronmiller, Curry, Curtin, Darlington, Davis, De France, Edwards, Elliott, Ellis, Fell, Fulton, Hall, Harvey, Hay, Hemphill, Horton, Hunsicker, Lamberton, Lawrence, Lilly, MacConnell, MacVeagh, Mann, Mantor, Minor, Niles, Parsons, Patterson, T. H. B., Patton, Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Stanton, Struthers, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, Harry, Woodward and Worrell—60.

So the amendment was rejected.

ABSENT—Messrs. Addicks, Andrews, Armstrong, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Calvin, Cassidy, Clark, Collins, Corson, Craig, Cuyler, Dallas, Dunning, Green, Hanna, Hazzard, Heverin, Knight, Landis, Lear, Littleton, M'Camant, M'CLean, Mitchell, Newlin, Palmer, H. W., Reynolds, Rooke, Ross, Sharpe, Smith, Wm. H., Van Reed, White, David N., White, J. W. F., Wright and Meredith, *President*—40.

Mr. BIDDLE. I move that this Convention take a recess until half-past three o'clock.

Mr. LILLY. I move to reconsider the vote on the sixth section. I do not ask for a vote on it now.

Mr. BIDDLE. I insist on the motion for a recess. It is one o'clock.

The *PRESIDENT pro tem.* The hour of recess is at hand. The Chair therefore now adjourns the Convention until half-past three o'clock this afternoon.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

CORPORATIONS.

The *PRESIDENT pro tem.* The question pending is on transcribing for third reading the article on corporations.

Mr. HALL. Mr. President: I desire to move a reconsideration of the vote by which section six of this article was adopted, and I ask leave to state the reasons on which I make the motion.

The *PRESIDENT pro tem.* Did the delegate vote with the majority?

Mr. HALL. Yes, sir. I ask leave now to state the grounds on which I make the motion. ["No."]

The *PRESIDENT pro tem.* Is the motion seconded?

Mr. LILLY. I second the motion.

The *PRESIDENT pro tem.* The question is on the reconsideration.

Mr. LILLY. I hope the gentleman will have a chance to make his statement.

Mr. LAWRENCE. I should be glad if the gentleman from Elk should have liberty to make his statement, so that we may know the reasons for the reconsideration. ["No; no."]

The *PRESIDENT pro tem.* The question is not debatable.

Mr. MANN. I call for the yeas and nays.

Mr. COCHRAN. I second the call.

The yeas and nays being required by Mr. Mann and Mr. Cochran, were as follows, viz;

YEAS.

Messrs. Ainey, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Black, C. A., Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Church, Clark, Corson, Curry, Curtin, Darlington, Elliott, Ewing, Fulton, Gibson, Gilpin, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Kalne, Knight, Lamberton, Lilly, M'CLean, Mantor, Palmer, G. W., Palmer, H. W., Pughe, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Runk, Russell, Simpson, Smith, H. G., Stanton, Stewart, Struthers, Temple, Walker, Wherry, White, David Woodward, Worrell and Wright—59.

NAYS.

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Campbell, Carter, Cochran, Cronmiller, Dallas, De France, Edwards, Ellis, Funck, Guthrie, Horton, Howard, Lawrence, Long, MacConnell, M'Murray, Mann, Metzger, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Purviance, John N., Smith, Henry W., Van Reed, and Wetherill, J. M.—30.

So the motion to reconsider was agreed to.

ABSENT—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Bullitt, Calvin, Carey, Cassidy, Collins, Corbett, Craig, Cuyler, Davis, Dodd, Dunning, Fell, Finney, Green, Heverin, Landis, Lear, Littleton, MacVeagh, M'Camant, M'Culloch, Minor, Mitchell, Newlin, Parsons, Patton, Porter, Read, John R., Rooke, Ross, Sharpe, Smith, Wm. H., Wetherill, J. Price, White, Harry, White, J. W. F. and Meredith, *President*—44.

The *PRESIDENT pro tem.* The section will be read.

The CLERK read as follows :

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.

Mr. HALL. The reason why I have moved the reconsideration is this: The latter clause of this section so provides that in the case of an appeal from a view for damages, it is imperative that the trial shall be by jury. While I believe that the right of trial by jury should remain inviolate, I do not see the propriety of compelling the parties in a case like this to submit to a trial by jury when they might be better pleased with some other mode which the Legislature may provide for determining difficulties between them. Another mode may be less expensive, less tedious, and more convenient to all concerned. It is, of course, proper that the right of trial by jury should remain to either party; but the parties ought not to be compelled to accept what may be a tedious, troublesome and more expensive mode.

I therefore move to amend the latter clause of the section so as to read, "the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury."

That will save the right without making the mode of trial compulsory.

Mr. CORSON. I submit whether it would not be better to say, "shall on the demand of a party."

Mr. HALL. I have said "either" party.

Mr. CORSON. There may be three parties, and would it not be better to say "on the demand of a party."

Mr. DALLAS. "Any party."

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was agreed to.

Mr. BUCKALEW. I move to further amend by inserting after the word "damages," in the fifth line, the words, "against a corporation."

But a word: I mentioned on second reading that the language as it now stands in this section would apply to an ordinary assessment of damages. The observation is correct. What is intended is an assess-

ment of damages against a corporation. It is not necessary to say "a private corporation" here, because the chairman of the Committee on Private Corporations has added a section to the end of the article which defines the meaning of the word "corporation" wherever it is used in this article. Therefore it will be simply necessary to say "damages against a corporation."

On the question of agreeing to the amendment proposed by Mr. Buckalew, a division was called for, which resulted fifty-six in the affirmative and one in the negative.

So the amendment was agreed to.

Mr. DARLINGTON. I move further to amend by striking out the words, "the final determination of." As it stands now the Convention will perceive that "the final determination of the amount of such damages shall in all cases of appeal be determined by a jury," which is a little awkward as a scholarly expression, and I suppose crept in by inadvertence. I propose to so amend as to make it read:

"The amount of such damages shall in all cases of appeal be determined by a jury."

On the question of agreeing to the amendment proposed by Mr. Darlington, a division was called for, which resulted fifty-two in the affirmative and three in the negative.

So the amendment was agreed to.

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

Mr. HOWARD. Let it be read.

The CLERK read as follows:

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 against a corporation made by viewers or otherwise. The amount of such damages shall, in all cases of appeal on demand of either party, be determined by a jury.

The PRESIDENT *pro tem*. The section as amended is before the Convention.

The section as amended was agreed to.

Mr. BOYD. Mr. President: I move to reconsider the vote adopting the third section.

The PRESIDENT *pro tem*. Did the delegate vote in the affirmative?

Mr. BOYD. Yes, sir.

The PRESIDENT *pro tem.* Is the motion seconded?

Mr. BIDDLE and Mr. H. W. PALMER. I second the motion.

The motion to reconsider was agreed to, there being on a division ayes forty-nine, noes twenty-seven.

The PRESIDENT *pro tem.* The section will be read.

The CLERK read section three as follows:

"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. BOYD. Mr. President: I propose to amend this section, in the fourth line, after the word "companies," by inserting the words, "not in actual use."

Mr. President, I will state the effect of this section, if I comprehend it aright, and I think I do because I have consulted with a great many gentlemen who are authority and who concur with me in opinion. I will read it:

"The exercise of the power and 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."

Now, I apprehend that under this section, the Legislature would have it in their power to incorporate a company who would have the right to take the entire property and franchise of another company to their use, for public use. For instance, a large railroad company could get an act of the Legislature authorizing them to build a railroad where there is now one in existence, say between Philadelphia and Norristown. Under such authority, such corporators would have the right to take the present railroad, which belongs to the Philadelphia, Germantown & Norristown railroad company. So it would give a right to take away from a turnpike company their road. We all know that turnpike roads are often built and for very many years no dividend is paid, no profit is made; and

just after it is established and likely to be a success, another company comes along with a charter from the Legislature authorizing it to build a turnpike between the same points, and this new company can take away the property and the franchises of that turnpike company; and so as to a bridge, or a canal, or a gas company, or a water company. That can be done cheaply by depressing the value of the stock previous to such action as this, and the compensation would be assessed according to the market value of the stock, so that when the new company came to settle the damages, or have a jury to settle and determine them, the measure of damage would be such market value of the stock, so that the owners of this stock would lose the advantage of the profits of the near future, which they should have after incurring all the risk of failure.

My amendment proposes that the Legislature shall have the right to take away the property and franchises of any incorporated company not in actual use. If a railroad company have more ground than they have in actual use, and another company comes along and wants to build a railroad, it can take the ground of that company which they have not in actual use, and build their road; and if you allow this section to stand they can take away the actual roadbed and the entire property and the franchise of such a company. I am perfectly convinced that there are not half a dozen gentlemen in this body who design to do anything of that kind; and yet as the section stands it can be done. A company incorporated under this section could go and take a portion of the property and franchise of a railroad company or any other corporation, just enough of it to destroy the whole of it, and in such a way as that could get the control of it. So that if they would choose to do so and the Legislature should see fit, they could make the larger fish swallow up the smaller ones all the time. Therefore I have thought it wise to introduce into this section these words so that no company shall have more property and franchises than are actually necessary to operate their own road and all over and above that can by the Legislature for any other public use. The section will read with this amendment:

"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 not in actual use."

Mr. CUYLER. I should be very glad to go with my friend, the delegate from Montgomery, at all times, if I could; but I cannot go with him upon this matter. The law of Pennsylvania to-day is, and it always has been, in exact harmony with this section as it reads. It cannot be that there should exist anywhere within the Commonwealth any property, be it a franchise or be it property of any description, which should be wanted for public use, which the State cannot take. The law of Pennsylvania to-day is that the State may take the franchise of any corporation she thinks proper to take, making compensation according to law. That always has been the law. But I cannot consent, for one, that there shall be any property within the bounds of the Commonwealth which the public may want and which it cannot have, making compensation for it. I think therefore that the section is an unnecessary one, because the law would be as the section places it if the section were never written into the Constitution; but it is not objectionable on the ground taken by my friend from Montgomery.

Mr. BIDDLE. Undoubtedly under the law as laid down by the Supreme Court of the United States the franchise or any property of a corporation can be taken for public use; but there is no reason why we should not put some limitation here against the abuse of such a power as that. The decision of the Supreme Court of the United States is negative; all they have said is that it is no violation of a contract to take a franchise or the property of a corporation for public use. But it has never been said that we cannot limit this principle. All that we are asked to do by the amendment of the gentleman from Montgomery seems to me eminently fair and proper. A small company may have made its improvement, may have laid down its road, if it be a railroad company, and may be operating it to the profit of itself and to the advantage of the community. Then a large company comes along which has a covetous eye upon the franchise so used and so operated, goes up to the Legislature, and gets the right to take hold of this smaller franchise, this small improvement, making compensation.

If adequate compensation were in all cases made, perhaps there would be no objection to it, although it seems to me that even then it would be a hard case,

when, after years of struggle against adversity, a small company is just coming into the full fruition of its privileges, to take them from it at a fixed price. But I say if adequate compensation could be always obtained it would not be so hard; but how is this compensation settled? It is settled by a court and jury, and it is an extremely difficult thing to ascertain how a franchise which is swallowed up shall be exactly paid for. In nine cases out of ten it is destruction to those who have embarked in the enterprise; and while I do not object to seeing the surplus land, the surplus property of any kind of a corporation taken for public use, I should think it eminently wise and proper to say by a declaration fixed in here that that which is not actually used by a corporation operated to the advantage of the public, should not be swallowed up by a power greater than itself. I shall, therefore, vote for the amendment.

Mr. CORSON. Mr. President: I agree to the remarks made by the gentleman from Philadelphia, (Mr. Biddle,) and favor the amendment proposed by my colleague, (Mr. Boyd,) but it seems to me it would be better to insert the word "dispensable," in the third line, immediately preceding the word "property," so that they cannot take any indispensable property or franchises of incorporated companies, but may take that which is dispensable. Property might not be in actual use and yet it might not be dispensable; and it seems to me they ought to have the right to take that merely which was dispensable, which they could do without. If the words, "not in actual use," comprise the full scope and meaning of my colleague, it would be a better term to use; but it does seem to me that the word "dispensable," in the third line, would cover the question more comprehensively.

Mr. DALLAS. Mr. President: I cannot concur with the views expressed by the two delegates from Montgomery and by the gentleman from Philadelphia, who last spoke, (Mr. Biddle.) If I were in the actual occupation and use of a warehouse, and any corporation, authorized by the State of Pennsylvania, should require it for their business, that corporation, upon paying me due compensation, under the Constitution, might take that warehouse from me for their warehouse purposes as a freight depot, notwithstanding the fact that it might be in my use and indispensable for my purposes; and I can see no good reason why corporate

property should be put on a basis separate from that of the individual.

Mr. President, the question is not between large corporations and small corporations. I think the gentleman from Philadelphia, who last spoke, and the gentleman from Montgomery have mistaken the question in presenting it in that way. It is a question between the State of Pennsylvania and all corporations, that the people of Pennsylvania, through their Legislature, shall have the right and the sovereign power of eminent domain over all property in the State, whether it be in the hands of large corporations, small corporations or individuals, that is presented by this section. I trust, therefore, that the Convention will view it in that light and will consider that it would be improper, unjust and unfair to engraft into the Constitution that we are now framing a provision that the property of every kind in this State may be taken by the people of the State for any public use upon payment of just compensation, but that the property of corporations, large or small, because they happen to be corporations, shall be free from the exercise of the right of eminent domain in the State of Pennsylvania.

Mr. BROOMALL. Mr. President: I am sorry that I cannot agree with the gentleman from Philadelphia, who spoke next to the last, (Mr. Biddle,) and the mover of this amendment, (Mr. Boyd,) and I cannot think that the gentleman from Montgomery sees the full extent to which his amendment goes. It is that under the right of eminent domain the State shall not be able to take any property or franchises of corporations while in actual use. If we pass that, it will be impossible to lay out a public road across a railroad that is actually used.

Now, it may be that the gentleman from Philadelphia, who first spoke, (Mr. Cuyler,) is right that the provision is not necessary; that is, that there is no property which cannot be taken by the right of eminent domain; but it would be dangerous to put in this provision, by virtue of which, I take it, we could not take property that was not actually used by corporations under this power. Hence I say that it will not do to pass this provision, because then it will prevent us from taking any property that is in use by corporations, even for the purpose of laying out a public road.

But again, is the provision as it stands in the section at all dangerous? Can any

damage be done by the Legislature under it? We have provided that nothing of this kind can be done except by virtue of general laws. The gentleman from Montgomery talks about one railroad absorbing the property of another. Suppose it did; it must be by a general law that will allow that other to turn about and re-absorb it again, so that no damage can be done.

I take it, therefore, that the section should stand as it is, or if amended at all, we ought to take the view of the gentleman from Philadelphia, who first spoke, (Mr. Cuyler,) and strike out the whole provision; but by no means let us put in this amendment.

Mr. HUNSICKER. We passed a section this morning, which I will read:

"The Legislature shall have the power to alter, revoke or annul any charter of incorporation hereafter conferred by or under any special or general law, whenever in their opinion it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators."

That section, it seems to me, covers all that is intended to be covered by the section now under consideration. I am not in favor of the amendment offered by my colleague; but I do think that the section which I have just read covers all that is meant to be covered by section three.

Now, let us see. It is not certainly meant by this section that the Legislature shall grant charters of incorporation one year and the next year by general law take them away? It is not meant that a corporation shall have no rights at all by virtue of its act of incorporation? It is not meant that there is to be nothing like a contract between the State and the corporators. It is not meant that a charter of incorporation is to be granted to a company to-day—and after the corporators have invested their money in the enterprise the next Legislature may repeal that charter without giving them compensations, or what is worse than all, take away the property and franchises and subject them to some other public use, or give them to some other corporation. The language of this section is, "to take away the property and franchises of a corporation and devote the same to public use," &c. What are the franchises of a corporation? They are its special privileges; its permission under the sanction of the State to do certain things under which

and by authority of which they invested their money; and now you propose by this section, as I read and understand it, that the Legislature may take away, either by general or special law (it makes no difference which) all the property and all the franchises which have been conferred upon a corporation. I like the spirit of the section, and if it were so amended as to prevent the slaughter of corporations who have conducted their business upon just and fair terms in such manner that no injustice should be done to the corporators, I should be willing to vote for it.

Mr. ALRICKS. It behooves us to be careful here, and do nothing that will render us ridiculous. We have passed a section in which we declare that the Legislature shall have the same power over the franchises of a corporation that they have over the private property of an individual. I apprehend there is nothing strange in this declaration; but we have been told, and by able lawyers, for example by the delegate from Philadelphia, (Mr. Cuyler,) that by virtue of the right of eminent domain the Commonwealth always has control of the franchises of corporations just as it has control of the property of an individual; that it can take the one or the other, where either is necessary for the public good.

With great respect to my friend from Montgomery, (Mr. Boyd,) who is a great joker, I was not certain whether he was serious in this matter or not. History has told us of a piece of witicism that was practiced in the English Parliament, and I did not know but that he was attempting to repeat something of the same kind here. When William Pitt was in Parliament a subject of discussion was the militia bill, and a gentleman offered an amendment that the militia should never go out of the kingdom. William Pitt moved to amend "excepting in case of actual invasion," intimating that they might run off. (Laughter.) I certainly cannot comprehend my friend from Montgomery, if he desires us to say that we shall never take the franchise or the property of a corporation unless they have no further use for it. I cannot support his amendment. I think it would put us in a false position before the public.

Mr. HOWARD. If I understand this section it simply asserts a clear principle of law, that is now the law of the Com-

monwealth of Pennsylvania, and I agree with the distinguished delegate from the city of Philadelphia, that he has stated the law as it is, and I know no reason why it should be placed in the Constitution unless it is to save and secure to the people this important principle of law by incorporating it into the Constitution so that the Legislature shall not have the power to barter it away or the courts to construe it away. It is simply asserting a principle of law absolutely essential to every Commonwealth, namely, that all the property of that Commonwealth shall be subject to the public necessity and to the public use.

The distinguished delegate who moved this amendment says that under the section as reported certain things might be done which would be mischievous. I grant you the best thing in the world can be abused and always has been; but why should it be said that the property of a corporation may not be taken for the public use? The citizen holds his property by as high a title as a corporation, and the citizen may have his in actual use, too. He may want to keep his farm intact; but he cannot do it. This amendment provides that all that a corporation may have in use cannot be touched, if the public necessity is such that they may need it for some other purposes. All that they have in actual use, if this amendment is to be adopted, is to be totally, wholly and forever exempted from the public use. We cannot accept such a proposition as this. It would be far better to strike down the whole section and then take our chances with the Legislature, who may possibly barter away this great principle of law unless we incorporate it in the Constitution. It would never do to accept such an amendment as the proposed, and I hope it will be rejected.

The amendment was rejected.

Mr. DARLINGTON. I move to amend in the second line, a mere arrangement of words, by striking out the words, "or abridged," and inserting them in a different place, after the word "be." The sentence will then read: "The exercise of the power and the right of eminent domain shall never be so abridged or construed," &c.

And again, in the seventh line to strike out the word "upon," so as to make the sentence read:

"Corporations shall conduct their business in such manner as not to infringe the

equal rights of individuals or the general well-being of the State."

The amendment was agreed to.

The PRESIDENT *pro tem.* The question is upon the section as amended.

The section as amended was agreed to.

Mr. WHERRY. I move to reconsider the vote by which the fourth section was adopted.

The PRESIDENT *pro tem.* Did the gentleman from Cumberland vote in the affirmative?

Mr. WHERRY. He did.

The PRESIDENT *pro tem.* Who seconds the motion?

Mr. CHURCH. I second it. I voted in the affirmative.

Mr. CUYLER. I ask leave to say a single word by permission of the House.

The PRESIDENT *pro tem.* The question is not debatable.

Mr. CUYLER. I only desire to say that this ought to be reconsidered—

Mr. CAMPBELL. I call for the yeas and nays.

Mr. CUYLER. I can demonstrate that this thing is wrong, even for the purpose which gentlemen had in view when they adopted it. I ask them to pause and listen for a single moment.

The PRESIDENT *pro tem.* The Chair must remind the gentleman from Philadelphia that the question is not debatable.

Mr. KAINE. Mr. President: I move to postpone indefinitely the motion just made. That motion is debatable, and now the gentleman from Philadelphia can go ahead.

Mr. CUYLER. Gentlemen will observe that this section was originally written so that the last clause which was adopted, was dependent upon a preceding clause, which was stricken out. The section reads: "In all elections for the managing officers of a corporation, each member or share-holder shall have as many votes as he has shares, multiplied by the number of officers to be elected."

That was in the original section and it was adopted, but the clause that followed it was voted down. Now the remainder of the section is, "and he may cast the whole number of his votes." What votes? The votes that were indicated by the very clause that was stricken out. As it stands now it is entirely meaningless. It only fails to accomplish any purpose whatever. It leaves the thing precisely where it stood before the section was proposed at all.

I say nothing with regard to the merits of the proposition itself. I had an opportunity of discussing that yesterday. It is impossible for any gentleman to estimate upon this floor the extent of the misery and the annoyance that this section, if carried out in the manner in which it was originally planned, must inflict upon every corporation in the State. It proposes to plant in the bosom of every board of directors of every corporation in the Commonwealth a hostile party, a personal enemy, a person devoted to destroying and annoying the business of the corporation. But that is upon the merits of the question, and I shall not recur to that. I simply ask any gentleman to state what the meaning of the section is. "He shall cast the whole number of his votes." How many votes has he? He has just one vote for each director; and that is all he has now. You give him no more. You do not alter the law a particle, but you leave it precisely where it stood before; because having stricken out the previous portion, on the motion of the gentleman from Bucks, (Mr. Lear,) you have stricken out the part which defines what votes are meant, so that at present there is nothing in the section to explain it.

Mr. BUCKALEW. May I ask the gentleman a question?

Mr. CUYLER. Certainly.

Mr. BUCKALEW. I would like to ask the gentleman in case the vote is reconsidered what amendment he proposes?

Mr. CUYLER. I am asked to state what my amendment is. My idea of an amendment to this section is to vote it down, believing it is inherently wrong in its own nature.

Mr. BUCKALEW. I am astonished at the remarks just submitted. This change was made on the motion of the gentleman from Bucks (Mr. Lear) with the distinct understanding that its only effect on the section was that it could not affect certain old charters in the State by which the number of votes of certain large stockholders was limited. As the section now stands, whatever number of votes belong by law to any stockholder he shall cast in this manner.

Mr. CUYLER. The number of votes is just one for each director.

Mr. BUCKALEW. I heard the gentleman state that before. A stockholder holds one share of stock, and if there should be six directors he has six votes; by law he casts one vote for each of six

persons at present. It does not change the number of his votes at all. Under this plan he could give them to three persons instead of six. If he has more shares of stock than one, the number of his votes at present is increased six times for each share. I cannot understand what trouble is on the gentleman's mind. This is as simple as simple can be. It leaves to the Legislature the power, to be sure, of saying how many votes a stockholder shall cast. They can, if they please, limit the number that a man can give on shares beyond a certain number; or they can provide, as they have ordinarily provided, that for each share of stock he shall have as many votes as there are directors. This section has nothing to do with the subject of the number of votes. It is simply a provision that whatever number of votes the stockholder has by law, he may concentrate upon a smaller number than the whole number of managers to be chosen; and I do not believe that the English language affords words which if written down here would make it plainer.

One additional remark:

If this section is to mean nothing, is to have no effect, I do not understand why the gentleman is exercised about it. If it is entirely innocent of any of those dire results which he instanced to us in a former debate, why should he desire the section defeated? He has instanced the attempt of the late Mr. Fisk to secure control of the Pennsylvania railroad company. Let me tell the gentleman that if this section had stood in the Constitution of New York, the gigantic swindles by the great railroad men of the city of New York would have been impossible. The English stockholders and the estates, the widows and the orphans in New York, and other cities, would have had in the management of the board of directors of the Erie railroad company men who would have exposed the nefarious transactions of Fisk and his colleagues, and called in the aid of the courts before the mischief was consummated, and millions that were plundered from the stockholders would have been saved to them.

I think the gentleman is raising here a phantom which has nothing in it. If he is, however, correct in his construction of this section, it is perfectly harmless.

Mr. KAINE. The motion which I made having accomplished its object, I now withdraw it.

The PRESIDENT *pro tem.* The motion to postpone indefinitely is withdrawn.

Mr. COCHRAN. I ask for the reading of the section.

The PRESIDENT *pro tem.* The section will be read.

The CLERK read as follows:

SECTION 4. In all elections for the managing officers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer.

The PRESIDENT *pro tem.* The question is on the motion to reconsider the vote by which this section was adopted.

The motion was not agreed to, there being on a division ayes thirty-four, noes fifty-two.

Mr. WRIGHT. I move that the article be referred to the Committee on Revision and Adjustment.

The PRESIDENT *pro tem.* The question is on transcribing the article for third reading, and the delegate from Luzerne moves that it be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

EDUCATION.

Mr. WHERRY. I move that the Convention now proceed to the consideration on second reading of the report submitted by the Committee on Education.

Mr. LILLY. I move to amend by saying, "the article on railroads."

The PRESIDENT *pro tem.* The motion is not amendable. It may be voted down if the Convention so desire.

The question being put, there were on a division ayes forty-nine, noes thirty. So the motion was agreed to and the Convention proceeded to the second reading and consideration of the article on education, reported from the committee of the whole.

The PRESIDENT *pro tem.* The first section of the article will be read.

The CLERK read as follows:

SECTION 1. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this Commonwealth above the age of six years may be educated.

The section was agreed to.

The next section was read as follows:

SECTION 2. The Legislature shall appropriate at least one million of dollars for each year, to be annually distributed among the several school districts according to law, and applied to public school purposes only.

Mr. DARLINGTON. I am inclined to the opinion that inasmuch as we have nowhere, so far, in the Constitution prescribed any sum at which salaries should be fixed, nor undertaken to decide what sum would be right for all future time, the second section had better be negatived, leaving that to the Legislature.

Mr. EWING. I hope also that this section will be negatived. I believe it is the only place we have undertaken to put in a sum of money, and I think it is inexpedient that it should be put here. It may not be too much now. It is more than has been appropriated in any one year before this time. It may not be enough hereafter. But for one I hope that the time is coming when there will be neither necessity nor propriety in the State making any appropriation whatever and when the different districts will raise their own money for educational purposes.

Mr. H. W. PALMER. When the time comes that the Representatives of the people cannot be trusted to educate their own children and raise money for it, we shall not need any schools in the State, and, therefore, I am against this section.

Mr. LILLY. I am in favor of this section as it is, for the reason that I think it will help to pass the whole Constitution. I think the people, if they see a million of dollars are going to be appropriated to educational interests, will vote for it. I do not know that it is of a great deal of consequence, as many other things we have done here, except that it will assist in passing the Constitution before the people.

Mr. ALRICKS. I move to amend in the first line by striking out "at least one million of dollars" and inserting "make a sufficient appropriation." It will then read :

"The Legislature shall make a sufficient appropriation each year to be annually distributed among the several school districts according to law and applied to public school purposes only."

Mr. MANN. I hope this amendment will not prevail. This section as it is now is the most important section that has been reported from any committee and will secure for this Constitution the most votes of any section in the entire Constitution. It is one that appeals to the best class of people throughout this whole State, and every friend of education in the State has already read this section

and has become enlisted in favor of this Constitution because of this liberal devotion to the interests of the education of the children of the State. A million of dollars to-day is not as large an appropriation as was made to the common schools when the system was first established, and the Legislature has never kept up with the prosperity of the Commonwealth on this question of education. It lags behind now and has for twenty years lagged behind the appropriations that were made when the present system was first brought into existence, and it is because the Legislature has not come up to the demands of the interests of education that this ought to stand as it is. It is but \$300,000 above the amount now appropriated, it is true, but it is the endorsement and the pledge of this Convention that the cause of education is to receive a new impetus, that makes this section important. I therefore earnestly hope that the amendment of the gentleman from Dauphin will not prevail and that this section as it stands will be adopted by the Convention.

The amendment was rejected.

Mr. KAINE. I do hope that the Convention will vote this section down. A section of this kind certainly ought not to go into the Constitution of Pennsylvania.

Mr. EWING. I ask for the yeas and nays on the adoption of the section.

Mr. NILES. I second the call.

The yeas and nays were taken and resulted as follow :

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Bannan, Barclay, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Calvin, Carter, Cassidy, Church, Clark, Cochran, Curry, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning, Edwards, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Guthrie, Hall, Hazzard, Horton, Hunsicker, Knight, Lamberton, Lawrence, Lilly, Long, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Metzger, Minor, Newlin, Niles, Parsons, Patterson, D. W., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Runk, Russell, Simpson, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry, Worrell and Wright—81.

N A Y S.

Messrs. Ainey, Bailey, (Huntingdon,) Black, J. S., Bowman, Buckalew, Bullitt, Campbell, Corbett, Corson, Cronmiller, Darlington, De France, Ewing, Gibson, Hanna, Harvey, Hay, Kaine, Mott, Palmer, H. W., Patterson, T. H. B., Reed, Andrew, Wetherill, John Price and Woodward—24.

So the section was agreed to.

ABSENT. — Messrs. Addicks, Baker, Bardsley, Bartholomew, Beebe, Bigler, Carey, Collins, Craig, Green, Hemphill, Heverin, Howard, Landis, Lear, Littleton, MacVeagh, McCamant, Mitchell, Palmer, G. W., Rooke, Ross, Sharpe, Smith, Wm. H., White, David N., White, Harry, White, J. W. F. and Meredith, *President*—28.

The *PRESIDENT pro tem.* The next section will be read.

The *CLERK* read as follows:

SECTION 3. No money raised in any way whatever for the support of the public schools of this Commonwealth shall ever be appropriated to or used by any religious sect for the maintenance or support of schools under its control.

Mr. CORSON. I move to strike out the words "in any way whatever," in the first line.

The amendment was agreed to.

The section as amended was agreed to.

The *CLERK* read the next section as follows:

SECTION 4. The Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

Mr. DARLINGTON. There should be a verbal correction there. The word "The" should be "A," so as to read: "A Superintendent of Public Instruction."

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Chester.

The amendment was agreed to.

Mr. CURTIN. I would call the attention of the Convention to the fact that we have provided in the report on the executive department for the election of a Superintendent of Public Instruction.

Mr. DARLINGTON. No, sir; that was stricken out.

Mr. CORSON. It certainly was agreed that this officer should be elected somewhere or other.

The *PRESIDENT pro tem.* The question is on the section.

Mr. COCHRAN. I should like to hear the section of the report of the executive department relating to this subject read.

Mr. CURTIN. I think the Convention had better pause until we ascertain that. My impression is that it has already passed.

Mr. H. W. PALMER. The article on the executive department provides that:

"The Superintendent of Public Instruction shall exercise all the powers and perform all the duties devolved by law upon the Superintendent of Common Schools, subject to such change as shall be made by law, and the office of Superintendent of Common Schools shall cease when the Superintendent of Public Instruction shall be duly qualified."

That is the way it passed on second reading.

Mr. WHERRY. It was clearly understood when the report on the executive department passed on second reading that that section should be voted down for the purpose of retaining this clause in the report of the Committee on Education. That was certainly the understanding.

The *PRESIDENT pro tem.* The question is on the section.

The section was agreed to.

The *CLERK* read the next section as follows:

SECTION 5. Neither the Legislature, nor any county, city, borough, school-district, or other public or municipal corporation, shall ever make any appropriation, grant, or donation of land, money, or property of any kind to any church or religious society, or to or for the use of any university, college, seminary, academy or school, or any literary, scientific, or charitable institution or society controlled or managed, either in whole or in part, by any church or sectarian denominations.

Mr. BUCKALEW. Mr. President: I hope that this section will be voted down. I would suggest to the chairman of this committee, that there is a section in the article on suffrage and elections which ought to be transferred to this article. I refer to the section which provides that women may be elected directors of common schools. I hope the Committee on Revision and Adjustment will make the transfer.

Mr. DARLINGTON. I thought about that and it will probably come before the

Committee on Revision and Adjustment. We had better adopt this section here.

The PRESIDENT *pro tem*. The question is on the section.

The section was agreed to.

Mr. HAY. I was requested by a delegate not now in his seat to offer an amendment to this article when it came before the Convention; and I now offer the following amendment as a new section:

"No board of school directors shall have power to issue bonds for any township, road or school district."

Mr. DARLINGTON. If the gentleman will indulge me a moment, there are two or three amendments agreed to in committee that I want to come in first.

Mr. HAY. I prefer to offer this. I was requested by Mr. William H. Smith, of Allegheny, to offer the amendment. I regret that he is not here to explain it, because he has not explained to me the reasons which actuated him in framing it. I leave the question to the Convention.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny.

The amendment was rejected.

Mr. DARLINGTON. I move a new section to come in as section six.

SECTION 6. The arts and sciences may be encouraged and promoted in colleges and other institutions of learning under the exclusive control of the State.

I wish to say one word with regard to this and two other amendments that I am about to offer, and they are amendments which were agreed upon by the Committee on Education; but when the article came before the committee of the whole we found ourselves with a very small body here, not even a quorum, and they were lost on that account.

Mr. CUYLER. Allow me to ask the gentleman what he means by the words "under the exclusive control of the State?"

Mr. DARLINGTON. Under the control of nobody else—under the control of no religious society.

Mr. CUYLER. My instinct would have led me that far, even without the aid of the gentleman from Chester; but I want to know what he means by adding those words to the section. Does he mean, for example, that taking an institution like the university of Pennsylvania, an utterly unsectarian institution, administered by a board of trustees elected in accordance with its charter—does he mean that that institution could not receive aid from

the State because it is not under the exclusive control of the State?

Mr. DARLINGTON. All I can say in answer to the gentleman is that after careful consideration by the committee of which I have the honor to be chairman, these were precisely the terms in which the section was couched; and the object distinctly was that no appropriation should be made of school funds to any sectarian school or any institution not under the exclusive control of the State.

Mr. CUYLER. I move to strike out the words "under the exclusive control of the State."

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. DODD. This amendment and some others which I suppose will be offered were before us on a prior occasion and were voted down simply because they were utterly unnecessary. The Legislature already has this power, and it is useless to put it in the Constitution.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia to the amendment of the gentleman from Chester.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the gentleman from Chester.

Mr. WHERRY. The distinguished gentleman from Venango (Mr. Dodd) is entirely mistaken when he gives the House reason to believe that these sections were voted down because they were deemed unnecessary. I trust gentlemen will recollect the history of this report when it was before the committee of the whole. These sections were lost simply because there was not a quorum of the House present and because the distinguished chairman of the committee of the whole refused to accept a majority vote of those who were present as carrying the sections. They were lost because there was not a majority of a quorum to vote for them.

Mr. GUTHRIE. I should like to have the amendment read.

The amendment was read.

Mr. H. G. SMITH. I hope this amendment will not prevail. Let the institutions of the State rest on their own basis. If we give this power to the Legislature, we do not know where they will land.

The amendment was rejected.

Mr. DARLINGTON. I move this amendment as a new section:

"SECTION. 7. The Legislature may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children."

Mr. WHERRY. I move to amend the amendment proposed by striking out all after the word "section" and inserting:

"The Legislature shall establish industrial schools for the education and training of delinquent and neglected children."

"No child in this State shall be permitted to grow up in ignorance, idleness and vice." [Laughter.]

Mr. DALLAS. I simply rise to ask the mover of this amendment a question; that is, what he means by "delinquent children;" and second, how he proposes to enforce the latter branch of the amendment.

Mr. WHERRY. I trust I shall have the floor on this amendment.

Mr. H. G. SMITH. I wish to vote intelligently on this amendment, and I should like to ask the gentleman from Cumberland what he means by the word "delinquent" in this amendment.

Mr. WHERRY. The gentleman from Cumberland desires to explain this proposition if he has an opportunity to do so.

The PRESIDENT *pro tem*. The gentleman will proceed.

Mr. WHERRY. Mr. President: I respectfully ask the indulgence and the attention of the Convention for a short time, not for my own sake but in view of the grave importance of the subject I am about to present. The question as it presents itself in the proposition now under consideration is narrowed down to this: the right and duty of the State to secure the moral, mental and industrial training of orphan, destitute, neglected, vagrant, truant, incorrigible, apprenticed, pauper and criminal children; children whom parents and guardians, society, the church and the schools fail to educate and train to usefulness and happiness, and who are learning in the streets, from countless teachers of vice, aided by those grim masters—hunger and want and despair—the malign arts that render the property of our households, the virtue of our women, and the health and happiness of our people insecure.

But we are met at the very threshold of the discussion by the question put to me the other day by the gentleman from Washington (Mr. Hazzard)—"Are there any such children in this State?" I an-

swer, yes, thousands of them. There are thousands of helpless children in our midst, growing up in ignorance, idleness and vice, trained from infancy to crime or suffered by neglect to fall into it, foredoomed from their birth to the police court, the prison and the gallows! Thousands who have never, so far as they can see, or I can see, received anything from society except the wretchedness of being, and owe it, of course, nothing in return but deadly enmity.

Let me call attention briefly to some well-authenticated statistics, and to some authorities of unquestioned weight.

The ninth census, that of 1870, reveals the startling fact that there are in this enlightened christian Commonwealth of Pennsylvania two hundred and twenty-two thousand three hundred and fifty-six persons above the age of ten years who acknowledge that they are unable to read and write. Of course the census-taker did not *examine* citizens as to their mental qualifications, nor did he qualify them as to the truth of their statements. It is fair to presume that the actual number who can not read and write is much higher than the number reported. So good authorities as Hon. John Eaton, Commissioner of the National Bureau of Education at Washington, Hon. J. P. Wickersham, Superintendent of Common Schools in Pennsylvania, Hon. J. D. Philbrick, of Massachusetts, and other eminent educationists, agree that if to the number returned by the census marshal was added the number who did not tell the truth, and to that again the number unable to read intelligently even in the lowest degree, the aggregate number of illiterates in the State of Pennsylvania would be nearly, if not altogether, doubled. That would make, in round numbers, four hundred thousand persons above the age of ten years without any education of practical value. If these life-long educators are not grossly mistaken (and it is scarcely possible to conceive how they could be, having every motive to make the best showing possible for their own work) we may be able at least to *conjecture* where the root of that cancer lies about which the distinguished gentleman from York (Judge Black) is so sorely exercised.

But of course we comfort ourselves with the thought that most of these illiterate persons are foreigners, immigrants, old persons, too, who will soon die off and leave behind them more intelligent children. It is a thin delusion, perfectly

transparent in the light of truth and fact. That same census report shows that of this number of illiterates actually reported as unable to read and write *at all*, thirty-one thousand five hundred and thirteen are between the ages of ten and twenty-one! In addition to this, our able and distinguished State Superintendent (who, I repeat, could have no motive for misrepresentation) declares in his report of 1872 that the actual number of children in the State between the ages of ten and twenty-one who cannot read and write at all is not less than seventy-five thousand! Think of it, honorable gentlemen, statesmen. Think of it! Seventy-five thousand children in the Commonwealth of Pennsylvania growing up to manhood and womanhood, to the dignity and sovereignty of freemen and the sanctity of motherhood, who, in the language of the Superintendent, are no better intellectually and morally than degraded heathens.

"But where are these children," members have frequently asked me. Well, sir, I will tell you where they are. There are not less than twenty thousand of them in this city alone. The honorable president of the Board of Public Education for the city of Philadelphia, the fifty-third annual report of this Board of Education, and the astounding report made by an able and impartial committee of this same board at a meeting held Tuesday, March eleventh proximo, fully bear me out in the assertion. Think of it! Nearly a thousand of these degraded beings raised to the privilege and duty of the elective franchise every year in this city alone! Is it any wonder your elections are impure, any wonder bad men are lifted to high places of honor and trust, any wonder honest tax-payers are plundered of a million dollars or more a year whilst the insatiable thieves go unwhipped of justice. Think of it, Honorable Mr. President and members of the Board of Education, who control the finest school system to be found on the face of the earth! Think of it, honorable members of this Convention, who have trouble about your grammars and spelling-books and other like weighty matters! Think of the twenty thousand children in your christian city who by no fault of theirs are doomed—doomed to lives of want and crime and woe *through ignorance*!

But these helpless ones are not all here. Fifty thousand of them are scattered elsewhere throughout the cities and boroughs and counties in the State. There are seven

hundred and fifty, on an average, in each county outside of Philadelphia. You will find them in wretched homes, under cruel, venal and debased guardians, in the open streets, on the public highways, in mills and mines, in factories and workshops, in almshouses, in jails, in penitentiaries, *everywhere* that human existence is possible. If members will take the trouble to examine the report of public charities for the year 1872, laid on their desks a few days ago, they will discover some facts with reference to their particular counties that will probably astonish them. Hundreds of these children are to be found in every county in the State.

There is not a single exception.

Less than one half the counties have provided either secular or religious instruction for the children in their county almshouses. There are seventeen thousand seven hundred and ten permanent paupers in the county almshouses of this State, two thousand of whom are children under sixteen, growing up in these hot-beds of vice and sinks of corruption and fraud—the county poor-houses—and one half of them receive no learning for this world and no light for the next. But besides these permanent paupers, there are thirty-eight thousand eight hundred and twenty-one habitual tramps, one-fifth of whom at least are children, and you have eight thousand more homeless, hopeless, helpless ones.

The PRESIDENT *pro tem*, The gentleman's time has expired.

MR. NILES. I move to amend the amendment, by striking out all after the word "children."

MR. WHERRY. Mr. President: There are in the State three hundred and thirty-six townships providing for their own poor. Of these only four *provide* educational means for the children under their care. Only sixty-two require the attendance of the pauper children at the public schools, and these for a term averaging but four months. But—tell it not in Gath—only twenty out of these three hundred and thirty-six christian communities provide, or require the attendance of their wards upon, religious instruction. God have mercy on the Commonwealth if we longer shut our ears to the cry of suffering and sinning humanity that goes daily up to Heaven!

But there are other motives than simple humanity to urge the State to a full measure of her duty in the matter of education. The relation of education and

labor is a great economic question now receiving the consideration of the best minds in this country and Europe. Much valuable information on this subject will be found in the report of the National Bureau of Education for the year 1870. I will give but a brief statement of the results of the inquiries in this direction, and in the language of the Commissioner:

"1. The increase of the laborer's wages on account of the simple knowledge of reading and writing, as estimated by observers, employers and employed, was put at an average of twenty-five per cent.

"2. The increase of wages caused by a better education, including a technical training in the particular mechanical occupation, was put at an average estimate one hundred per cent."

But I pass this over to the reflections of the Convention that I may call attention at greater length to the relations of education and crime. Here, too, I cannot but express the regret that the modicum of time allotted to me under the rules will necessitate a very brief and hurried outline of the subject.

Every man of any discernment whatever must have observed that the seeds of mature criminality are sown in childhood. Often, however, the fruit ripens on a tender bough. Mr. Mundella, a member of the British Parliament, asserts that in England one child out of every three hundred is a delinquent; that more than twenty-five per cent. of those poor wretches who barter the sanctity of woman for the wages of lust are under sixteen years of age. In the name of humanity can it be true? More than twenty-five per cent. of the vilest crime known to man or God committed by boys less than sixteen years old!

Authenticated records show that three-fourths of the petty larcenies committed each year in New York city are committed by children under eighteen. I doubt not the statistics of this city, if they were to be had, would make a similar showing.

There are now in the prisons of the United States twenty thousand convicted criminals—more men than the great Washington ever commanded in battle. Eighty per cent. of these are persons without education whatever. Ninety per cent. of them have never learned any trade or acquired skilled labor, even in the most common occupations. Ninety-five per cent. of them either had no homes, or else came from ignorant, idle or vicious homes. Five per cent. of the population commit

thirty-five per cent. of the crime, whilst less than one-fifth of one per cent. is committed by those who are educated. Or, as Dr. Wines curtly but forcibly expresses it, "One-third of the crime is committed by two one-hundredths of the population."

But I have said enough on this point. Volumes have been written and will yet be written on the relations of crime and education. We know enough—or can know enough if we take the pains to do it—to show us a straight path of duty in the rescue of ignorant, helpless children, even to the end that not one of them shall be permitted to grow up in ignorance, idleness and vice.

Mr. President, the time has gone by to question the right of the State to demand and command the moral, mental and industrial training of every child within her borders. Sir, if parents fail of their duty then must education be made compulsory. There are other rights to be observed besides those of a degraded parent. The child himself has a right to such training as will fit him for usefulness and enjoyment in life, just as much as he has a right to care and protection and food and raiment. The parent who abandons his child to physical want is punished; so ought he to be punished who starves to death his mind and soul. And when the parent fails and the child is about to die from physical want the State steps forward, in *loco parentis*, and gives him life. For what? To live in ignorance, in wretchedness and in toil; to curse society by his crimes, and reproach it by his blighted life for the evils it might have and should have prevented.

Society, too, has rights. It is of the highest interest to you and to me whether our fellow-citizens are ignorant or intelligent. We stand with shame at the ballot-box and see our ballot cancelled by some ragged sot too ignorant to comprehend the ballot he casts. The tendency of all civilized nations is to a full recognition of the truth that it is the right and the duty of the State to educate her neglected population. And she has the right to see that her supreme purpose is not defeated. What we need in our Constitution is a positive and immutable mandate of the people that the ignorant and vicious shall be instructed and subjected to wholesome reformatory discipline, and their children saved from their follies and their crimes.

Well may we tremble when we remember those burning words of the great

champion of universal education—"An uneducated ballot is the *winding-sheet* of liberty." The human imagination can picture no semblance of the destructive potency of the ballot-box in the hands of an ignorant people. The Roman cohorts were terrible; the Turkish janizaries were incarnate fiends; but each was harmless as a child compared with universal suffrage without mental illumination and moral principle. The power of casting a vote is far more formidable than that of casting a spear or javelin. In the uneducated ballot is found the nation's greatest danger; but the educated ballot is the nation's main tower of strength. Has society no power to protect itself? Has the republic no right to live? Shall she continue to nurse in her bosom the viper which will one day sting her to death? If these questions are not answered by the representatives of the people, answered by the enactment of a wise and just provision for the education of *all* the children of the nation, the historian will answer them for us when he portrays the downfall of a once mighty nation which forgot its origin, derided its destiny, sold its birthright and ended its career in shame and disgrace.

I accept the proposition of the gentleman from Tioga (Mr. Niles) and ask that my amendment as modified be read.

The PRESIDENT *pro tem*. The amendment to the amendment will be read.

The CLERK. The proposition is to amend the section offered by the delegate from Chester (Mr. Darlington) by striking out all after the word "section" and inserting:

"The Legislature shall establish industrial schools for the education and training of delinquent and neglected children."

Mr. MANN. I do not suppose a single delegate here present would take any issue with the very eloquent effort of the gentleman from Cumberland, (Mr. Wherry), as to the necessity of educating every child in the Commonwealth. We have already made provision for the very thing which the amendment he has offered aims to accomplish. The first section of the article under consideration, says that the Legislature "shall provide for the maintenance and support of a thorough and efficient system of common schools wherein *all* the children of the Commonwealth above the age of six years may be educated." Are there any other children than those provided for in

the first section, wherein all the children of the Commonwealth may be educated? If the gentleman desires to change the word "may" to "shall," I will very cheerfully vote to reconsider the section so as to say they *shall* be educated. But it certainly is a multiplication of words and of sections, first to provide that the Legislature shall establish common schools throughout this State, wherein all the children may be educated, and then go on to single out a particular class. The first section includes *all* the children, every child in the Commonwealth, no matter what its condition, rich or poor, favored or unfavored, clothed or unclothed. There can be no other children to be provided for, under the section offered by the gentleman from Chester as proposed to be amended by the gentleman from Cumberland, and it is an indication that this first section means nothing, to adopt another. Why, sir, I suppose this first section means all that it says and that it is an admonition to the Legislature to carry it out and provide that hereafter there shall be no children in the Commonwealth not taken care of and educated. That is what I suppose the first section means. If it does not mean that, blot it out; let us have no unmeaning sections in this grand article in relation to the education of children.

I am opposed to the proposed section for another reason. I assert that the true way to reform and to bring up into proper manhood these children now neglected is to bring them into the common schools of the State and not to build houses here and there about Philadelphia and other cities written upon them, "for neglected and abandoned children;" for that very thing will make them abandoned. You cannot reform children in that way. They are to be brought into the common schools of the State, or they are to grow up abandoned and criminal, and it is for that reason that I am opposed to the amendment offered by the gentleman from Cumberland.

You cannot take the favored children of a ward in Philadelphia and put them into one school and the poor and unfortunate into another school and give them the advantages that the system of education is intended to accomplish. All this separation and distinction of children is against the unfavored class; and in behalf of the poor and unfortunate children I appeal to this Convention to vote down both the amendment and the original sec-

tion. If this first section does not cover the ground, reconsider it and amend it so that it will cover the ground and will compel the Legislature of Pennsylvania to provide for all the children, rich and poor, favored and unfavored. Let us have no distinctions, no separate provisions for one class of children over another; provide for them all in the same section and all alike.

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 delegate from Chester (Mr. Darlington.)

Mr. DARLINGTON. One single word, Mr. President. This section is intended to provide for such children as it is true are admissible into the public schools, but who may not have the means to clothe or feed them to get them there. It is intended for a class neglected and abandoned by their natural protectors, to whom the State owes a duty not only to feed and clothe but to educate, and not only to educate but to feed and clothe. It is therefore that we have proposed to give to the Legislature the authority, and so far as our injunction shall go to enjoin upon them the duty of providing for the care and sustenance, maintenance, education, and clothing of this class of people who would otherwise grow up in ignorance and vice. I need say no more, I am sure, to commend this section to the favorable consideration of the Convention.

Mr. KNIGHT. I move to amend by striking out "may" and inserting "shall."

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. WHERRY. On that I call for the yeas and nays.

The PRESIDENT *pro tem*. Do ten gentlemen rise to second the call for the yeas and nays?

Ten gentlemen not rising to second the call, the yeas and nays were not ordered.

Mr. KNIGHT. I merely want to say, that in my judgment, the children alluded to in this section are very much neglected, particularly in this city, and I think if more attention were given to them, and more money spent to educate that class of the community, and less of it distributed for the higher branches of education in schools to which many children are sent when their parents are fully competent and able and sufficiently wealthy to edu-

cate them otherwise, it would be a great thing in the future for the State of Pennsylvania. I quite concur with the gentleman from Cumberland (Mr. Wherry) in the remarks he has made this afternoon, and I hope the Convention will give them full consideration and agree to put in the amendment that the Legislature shall not permit children to grow up in ignorance, idleness and vice.

Mr. HAZZARD. Mr. President: When the proposition was first read to the Convention it created some merriment, because it struck the Convention, I presume, as it did me, that the desire of the delegate was that there should be no more bad boys in the State; that no vicious persons should grow up in Pennsylvania. If it were possible that we could pass such a section and then find means to carry it out, it would be first-rate; but I think the section now under consideration will meet with the favorable, sober thought of this Convention.

Mr. President, there comes before the hotel at which I board a little girl, probably four years old, almost every night with her brother, perhaps about ten. They pretend to give us music. They have what I presume they call a harp, and the little girl has a triangle. They tinkle upon the triangle and play upon the harp; but they do not produce as much music to me as I used to make myself with a corn-stalk fiddle. I have talked to that boy. He presses his begging to the people in the house, and seems to be sorrowful and sad when he does not get pennies. I asked him one day how he came to be in this business. He said: "I have a master; I am bound to that master by my parents." Perhaps some unshaven wretch that sits in some dark corner in this city of churches and of schools and wealth, and in dissipation and debauch spends the money earned by these children. This boy told me: "If I do not obtain from you and from others forty-five cents to-day, and every day, I get a whipping." That little Italian boy and that little Italian girl are sent upon these streets to make their music for charity, and unless they acquire it they are whipped, and thus they grow up with nothing but a street education. Should there not be something put into the Constitution to restrain such things as this? Are we wise enough to do it? Are we capable of doing it? Does it not demand our serious attention rather than our sneers?

I do not know that this will be compulsory. I have not had time to examine it; but when I catechised the gentleman from Cumberland on its consideration before in the committee of the whole, I was not aware that this State had its seventy-five thousand uneducated children training for our prisons, training to rob our houses and steal our property; and I told him that I had known but a very few in Washington county, the county of colleges and of schools, and was astounded when he showed me the figures, as reported in the report of the common schools, of over twelve hundred in Washington county, and I would not have believed it had he not shown me the figures. Why, Mr. President, there are two boys in my town, and the only ones I knew at that time, who could not read or write. These figures are upon the books that are on the desk of every delegate here, and either the figures are falsehoods or we must believe them; and if this be so, can we not make some provision to alter such a state of things or alleviate the evil to some extent?

I said there were two such boys in our town. I went to the father of those two boys; I knew they could neither read nor write; and I asked him if he would not send them even to Sunday school, and that I would go there and undertake to teach them and any others who wished to learn to read and write. He told me he believed that reading and writing, and education generally, only made rascals, horse thieves and counterfeiters. One of these boys to-day, perhaps, may be able to read; but they are both vagabonds, they are rowdy boys, and have to be restrained by the police. And so it is all over this land. Twenty thousand in this great city, did I hear? Twenty thousand! From the ranks of these will be replenished the cells of your prisons; from these will your poor-houses be filled. You must lock your doors at night; you must provide all these trammels and devices to restrain those that are trained in this identical way upon your streets to rob your entries, to break into your banks, to kill and murder your citizens. Is there any way to stop it? Shall we not hesitate, shall we not pause rather than sneer at such a proposition as this? Shall we not pause and consider if this body, the intelligence of Pennsylvania here represented in this Convention, cannot in some way devise a remedy so that such things shall not exist any longer? or if not altogether

remedied such things shall be restrained to a considerable extent. A street education prepares the girls for brothels, and the boys for prisons. Industrial schools with limited educational advantages, would furnish ten thousand skilled artisans to the State, and instead of being so great an expense, as some have said, in the end the Commonwealth will be greatly the gainer, and thousands of neglected children furnished with the means to earn a respectable living.

Mr. STEWART. Mr. President: I have a single observation to make. I do not think there is a provision in this amendment that is not covered by the first section of the article reported by the committee, except the compulsory clause. The first section is very general in its terms. Its language is "all children;" and in referring to the education, it is "public school." There is nothing that compromises the character of public schools in any way at all. They may be industrial schools or they may be schools of another character. The only new provision that is added by this amendment is the compulsory clause. Now if we are to have that, do not let it be applied only to these industrial schools that it is proposed to establish, but to all. If it is good for one, it is good for all. If the amendment contemplates anything more than that—

Mr. DARLINGTON. I am going to offer another on that point.

Mr. STEWART. Then it has not been yet offered. I am going now to refer to the remarks of the gentleman from Chester. He indicated the purpose of this amendment as being the maintenance and support of these children by the Commonwealth. Under the language of this amendment, that cannot be done. I insist upon it, if that is its purpose, it falls far short. It simply requires the attendance of these children at these schools. It does not impose on the Commonwealth the duty of maintaining and supporting them at all. It simply requires their attendance; that is all; and if it is the purpose to throw on the State the obligation of supporting and maintaining these children, this amendment is not what it ought to be.

Mr. CARTER. Mr. President: I desire to say that I have full sympathy with the object intended by this amendment, and hope that it will receive the respectful consideration of this Convention.

If there is one thing in which the State bears the relation of *loco parentis* it is in

this matter of the neglected children of this State, the poor, the abandoned. I am in full accord with the remarks of the gentleman from Cumberland and I was touched by the remarks of the venerable gentleman from Washington, (Mr. Hazzard.) I hope that we shall not steel our hearts against the argument of one and the appeal of the other.

As to the reasons why this would be proper action on the part of this Convention, I wish to be permitted to say but a few words. If it be necessary that the State shall see to the education of the children of the State at large, it is imperatively necessary that the effort of the State in that direction should be directed to those that most require it; that is, to the poor, the neglected and the abandoned who have not parents and friends to care for them.

We all know, I presume, something of the character of the board of charities and of Mr. Harrison, its president. He chanced in here the day after we had voted down this proposition in the committee of the whole, and expressed the greatest regret at our action. Said he, "I could scarcely sleep at night when I thought that the Convention had passed over that matter in that way."

We have a perishing class, Mr. President, soon, alas, most certainly to become the dangerous class. That class increases, I am sorry to say, with the apparent growth and prosperity of our communities; and it behooves us not merely for the sake of humanity, not merely for the sake of those little children that are growing up, as the gentleman from Cumberland said, with no other prospect or future before them except the poor-house and the prison, or perchance the gallows. To that class, which has no protection, it is the bounden duty of the State to look to their interests, and to do something for them.

Why, sir, the despotism of Prussia has a compulsory system of education for all, believing that it is necessary to the interests of the German Empire that her children shall be educated. If that be true there, how much more true is it in regard to this country where every man is a voter, an equal and a freeman? I wish this Convention to take this view, that we have a numerous class, and a continually increasing class, to whom we should extend the protecting *ægis* of the State. I hope that the Convention will not vote down thoughtlessly this most eminently wise and humane provision.

A word in regard to the view taken by the gentleman from Potter (Mr. Mann.) They are not embraced, it seems to me, in the first section. It is true that the class referred to are those who can avail themselves of the advantages of the public schools. But there is another class, the class whose claims I am now advocating and presenting in this manner before the Convention, who cannot avail themselves of the public schools. Their parents may be inclined, as in the case of these Italian or other children, to prevent them from going to school, wishing to avail themselves of their poor services. Or they may be prevented by poverty, by many causes, and it is to this class that education should be so far compulsory. I am opposed to the compulsory education of all the children of the State. If I were opposed to it for no other reason it would be that the people of this Commonwealth are not prepared to endorse so strenuous a measure, and it would bring ruin and defeat on the work of this Convention; but I draw a distinction between the children of the Commonwealth at large and this poor, wretched, miserable class which is appealing to us with their poor, wan cheeks and sunken eyes. Our cities are crowded with them. For us to take them under our charge is due to them and for the safety of the State.

MR. CURTIN. Mr. President: I listened to the remarks of the gentleman from Cumberland (Mr. Wherry) with quite as much interest as I have to the remarks of any of the intelligent gentlemen of this Convention upon any of the questions which have been brought before it for its deliberation. I regard his amendment as the most important yet offered in this body, and so far as I am concerned, I endorse every sentiment that he uttered.

The statistics that that gentlemen offered to this Convention are wonderful and alarming, and in advocacy of the amendment offered by the gentleman from Philadelphia (Mr. Knight) to the section offered by the gentlemen from Chester, (Mr. Darlington,) the chairman of the Committee on Education, to put in the word "shall," I would supplement the statistics offered by the intelligent gentlemen from Cumberland with one I read in a newspaper in this city the other day. That column of figures reported that there are ninety-two thousand skilled workmen in the city of Philadelphia, there are thirty-five hundred apprentices, and there are twenty-three thousand aban-

doned boys on the streets without any visible means of living, occupation or support.

How is this army of children, otherwise uncared for, to be educated? It will not do to say that the Legislature can do it. There was in the Constitution of 1790, power given to the Legislature to establish a better system of education, and yet before that power was exercised by your Legislature, forty-five years had elapsed, from 1790 to 1835, and then it was only by the courage of the executive, George Wolf, and the wonderful eloquence of the great advocate of education, Thaddeus Stevens, in the Legislature of this State that induced the government to accept the system. And we all understand after that system of education was adopted, how it was rejected with scorn and contempt in many of the counties of this Commonwealth, how it struggled through an uncertain existence, and how it received so grudgingly from the Treasury of the State, year after year, its small pittance until it worked itself into popularity; and now the members of the Legislature, the representatives of the people, are liberal and generous in their donations to the system of public education. So now if you put into this new Constitution a provision that the Legislature may do more than it has done, forty-five years may elapse before they will meet your wishes in this regard, and in that forty-five years destitution and ignorance and abandonment will be growing continually upon you, keeping pace with the increase of the population of the State; and these wretched boys, who are now without occupation, may find their places in your poor-houses, your jails or your penitentiaries.

Besides that, you need skilled labor and the highest morality; the most rigid economy that the people of this rich State could practice would be to take these children from the highways and the by-ways, the lanes and the alleys, and erect institutions for them and put them there and give them education and teach them skilled labor to supply the place of the skilled labor you now have and which could be supplied in no way except by emigration. The gentleman who has just taken his seat (Mr. Carter) says that he is opposed to compulsory education. I do not know that compulsory education would receive the approbation of this Convention. I scarcely think from the disapprobation with which the proposition of

the delegate from Cumberland was treated that it can. But it does no harm, as gentlemen are in the habit of expressing personal opinions upon this floor, for me to say as a delegate that I am in favor of compulsory education.

Mr. CARTER. Will the gentleman allow me to explain?

Mr. CURTIN. With pleasure.

Mr. CARTER. The gentleman did not understand me correctly. I merely meant that I was opposed to a general system of compulsory education throughout the State. Of course I think that these neglected children, the abandoned miserable waifs and outcasts of society, should be taken under the protection of the strong arm of the State and educated. Certainly I am in favor of that. What I objected to was a general system of compulsory education which would not only include all these but all other children.

Mr. CURTIN. I do not still agree with the delegate from Lancaster. Where the common schools are opened as they are in this State to receive all the children of the Commonwealth and parents send the children to be educated, it is well so far as it prevails. Where a parent has ability, and does not send his child, the law should compel the attendance of that child. Where a parent has not that ability then the first, the highest and the holiest duty of a rich and prosperous people is to take the child and save him from abandonment and crime, to put him in an institution, to educate him and to teach him skilled labor that in the future he may earn an honest living, that he may be an ornament and support to government and society instead of an abandoned wretch and an inmate of the poor-house, or worse still, the jail or the penitentiary. I trust that the amendment offered by the gentleman from Philadelphia will prevail, and we will not be content with the article until we have carried it further. I hope that the good sense of the Convention will come back to the sound principle and to the true morality and duty of the sentiment of the delegate from Cumberland. I shall give the amendment offered by the delegate from Philadelphia my hearty support, and will vote for it with great pleasure.

Mr. HUNSICKER. I am in perfect sympathy with this amendment, and I may say here that this is not the first reform that has been greeted with sneers or ridicule. Nearly every measure of reform when first broached was received with

disfavor, and if you desire to accomplish a reform and if this Convention is prepared to take a long step in that direction, let us make this section obligatory upon the Legislature. If you adopt the section as it stands and leave it optional with the Legislature to introduce this system, it will be a mere *brutum fulmen*, because the Legislature *may* do it without our recommendation if we do not prohibit it from so doing. If you desire to adopt this reform, say that the Legislature *shall* provide for the education of the neglected children of this Commonwealth.

I also have had some little experience on this subject, and I was in favor of the first part of the proposition of the gentleman from Cumberland from the time that he broached it. I was prosecuting attorney of Montgomery county for three years, and during that time a large portion of those who were convicted in our courts and sent to the penitentiary were children under twenty-one years of age. The fruitful source of pauperism and crime amongst children lies in the fact that they are neglected and have no education. We have trades unions now existing which preclude trades people from taking apprentices. We no longer bind our children out to learn honest trades, and if the great State of Pennsylvania is now prepared in this enlightened age to take hold of these abandoned and neglected children and educate them to useful trades, she will make them ornaments to society, and Pennsylvania will be the pattern State of the Union.

I trust that this subject will receive the serious consideration of this Convention. I trust that every member will not be anxious to save the public time but that this question will be discussed until it is thoroughly understood. If this plan is not free from objection let it be matured. Let us get the best plan, and what we do want is that there shall be a plan devised by means of which the State shall be saved from this disgrace.

MR. STANTON. Mr. President: As I understand the question before the Convention, the section offered by the gentleman from Chester, (Mr. Darlington,) the chairman of the Committee on Education, provides that the Legislature may establish industrial schools and require the attendance at those institutions of children who are neglected or abandoned. The question immediately pending is the amendment of my colleague from Philadelphia (Mr. Knight) to render this im-

perative by changing "may" to "shall." There seems to be a difference of opinion in regard to what shall be done with this section, and many gentlemen favor the proposition offered by the chairman of the Committee on Education. As that is proposed to be modified by the amendment of the gentleman from Philadelphia to provide a safe and broad system of compulsory education, I would undoubtedly favor it, and I am also in favor of the proposition submitted by the gentleman from Cumberland (Mr. Wherry.)

I am certainly in favor of compulsory education, and if we cannot get that then let us have the next best thing to it. In reference to the remarks of the gentleman from Cumberland, I endorse every word that he has said. He has referred to an investigation made under the direction of a committee of the Board of Public Education of the city of Philadelphia with reference to the number of children in this city who are deprived of the facilities for obtaining education. His statement was correct. A committee was appointed by that board who carefully gathered the necessary data from every quarter of the entire city, from the by-ways and alleys of its populous districts and from its more rural portions, and they disclosed the alarming fact that there are over twenty thousand children in this city of christian influence and christian liberality who have no education and are receiving none, and who have no other means of maintaining themselves than by selling matches or small fruits in the public streets, or else by begging or stealing.

In one of my reports to the Board of Public Education, I discussed this question of compulsory education. I differed with some of my colleagues upon the subject, but I recommended the Board to urge the Legislature to establish a series of schools to be called rescue schools, and the plan then suggested still presents advantages to my mind. I did not then care, nor do I now have any preferences as to where these schools should be located. They might be placed in the interior of the State or near this city, but wherever they can be most useful there they should be located, and to them the destitute and deserted children of the city should be gathered, should be educated and should be taught practical trades. The expense of such a plan would be no serious difficulty and would mainly consist in the first cost. Under proper

management, in the course of a very few years the State would receive sufficient revenue from the results of the labor of these children for their maintenance, and the institutions would become self-supporting. As it is now, they are without education and without home training. Many of them have no home. They lie at night in market houses, sleep upon cellar doors, and seek shelter in any convenient shed or out-house.

The subject has been neglected too long already. Every day the numbers of these children increase, and the consequences that must follow the rearing of this army of vagrants will one day return to plague us for our inattention and recklessness. We must prepare a place for them, and the sooner we attempt to curb this evil, the easier our task will be. Our excellent ex-Governor (Mr. Curtin) has spoken of skilled labor, and shown you that with ninety-two thousand skilled workmen in our city to-day, we have only three thousand five hundred apprentices, but little over one apprentice to thirty workmen. The only way in which we can reach this labor problem, is by the education of our wandering vagrant children, and only with education can any mechanic in this country make his calling effective and his work appreciative.

I have not time to illustrate this thought and do not believe it at all necessary to do so. To one practical lesson in this direction which has carried the subject home to my mind with convincing force, I may however, be pardoned for advertising. Some three years ago, under the direction of the board of Public Education in this city, a series of schools were instituted which were called Artisan Night Schools. They furnished to mechanics and laboring men the opportunity of receiving evening instruction in the ordinary elementary branches of education, and the result has been that those who availed themselves of this means have increased the value of their labor from twenty-five to fifty per cent. Education, even in a limited sense, increased their usefulness, and while it made them better members of society, and increased their respect for law and the usages of a civilized community, it made their work more productive. The same result would attend the education of the children. I do not care what their habits or associations may be. I do not care if they are

vagrants or vagabonds, or even thieves. Even an educated convict on the dock receives more consideration than an ignorant one.

But all that could be said on this broad subject will not add to the force of what has been so well presented by the gentlemen from Cumberland. Education is the fundamental groundwork of our government. Let us strengthen the foundations of our own Commonwealth, and let us provide that all our outcast children shall be educated and trained to useful trades. If we do that to-day for our twenty thousand children who are growing up in ignorance and crime, our society will be so strengthened and improved that the generations of the future will find no such statistics at their doors.

Mr. GIBSON. Mr. President: The new section proposed by the delegate from Chester raises a question much broader in its scope than would be implied from its language. I rise only for the purpose of proposing an amendment to the section, but desire to make a few brief remarks in regard to it. In the first place I desire that the section be read.

The CLERK read the section as follows: "The Legislature may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children."

The PRESIDENT *pro tem*. The question now before the Convention, is the amendment of the gentleman from Philadelphia (Mr. Knight) to the amendment, to strike out "may" and insert "shall."

Mr. GIBSON. I move to amend by striking out all after the word "schools."

The PRESIDENT *pro tem*. That would be an amendment to the section and not an amendment to the amendment. There is an amendment to the section already pending.

Mr. GIBSON. Then, sir, in regard to the word "shall," I trust I may be indulged in a few remarks, and my amendment may be hereafter offered to the section. I think that the wants of the people of this Commonwealth, and the good of the Commonwealth itself are not entirely contained in this word "education," or what is understood by the term "education." Every one understands what the word education means. It is being taught in those branches of knowledge which are to fit persons for the useful duties of life. It is to teach them the ordinary branches of reading, writing and arithmetic and such other

additional branches as the laws may provide shall be taught in the public schools. But there is nothing in this term "education" or in the term "public schools" which implies what is meant by the term "industrial schools," where children may be taught trades, and not be left when they have taken the ordinary branches of education, to seek for clerkships or for professional employment of some kind, in order to earn a living; or to be on account of their education above learning useful trades.

Citizens of this Commonwealth, respectable, and well-to-do men, have endeavored to have their sons taught trades by apprenticing them or by placing them in our mechanical shops and have failed to do so, because of secret and arbitrary trade rules, or could only attain that end by submitting to the conditions which are imposed upon all persons who seek to do so by the rules that govern what are known as the trades unions. I think, sir, that not only are the vagrant, abandoned and neglected children of the Commonwealth to be taken care of in this respect, but the children of respectable parents are to be taken care of. Sir, I shall adopt the words of an article that has been handed to me from a newspaper, which expresses much better than I can express it, an argument in favor of teaching children trades, which I submit to this Convention and which I am willing to adopt as my own. It reads as follows:

"THE PROBLEM OF THE HOUR.—Philadelphia has eight thousand manufactories and workshops, says the *Star*, in which are employed ninety-two thousand one hundred and twelve journeymen, and only six thousand five hundred apprentices, and of these latter perhaps not more than one in twenty regularly indentured. At the same time, it is stated that there are about twenty-five thousand boys and girls between the ages of sixteen and twenty-one in the city who are without useful employment."

"This is a startling statement. It challenges the attention of every man interested in the future of the rising generation, and in the prosperity of the skilled professions of our country. As has been stated on a number of occasions, the large majority of our skilled workmen are from foreign countries.

"It is safe to assert that not more than one in five of the regular journeymen employed in American workshops and manufactories are of American birth, and

under the present system the disparity must daily become greater, until finally an American skilled workman will be a rarity.

"This is a subject of overshadowing importance and the discussion of which is imperatively demanded in order that there may be a satisfactory solution to the problem—What shall we do with the boys?

"The same conclusions will apply in Columbia (the place of publication of the newspaper from which this article is taken.) An advertisement for a "clerk wanted" will receive from one thousand to twenty-five hundred applications or answers in Philadelphia. In Columbia a similar advertisement will receive proportionately the same number, while the trades go begging for good apprentices. Honest labor is respectable, and the sooner our boys are impressed with the truth of this, the better for them and the community.

"Among the hundreds of men that crowd our prisons, and women that throng the chambers of death and hell, are few who have learned honest trades. Industrious persons with trades know what they can do, and know just where to go for steady and remunerative work. But others, who in early life spend much and earn little, who are too proud to learn trades, and too lazy to do drudgery, of course, look out for an easier way of getting a living; and while men, by theft, swindling, robbery and murder, work out the legitimate result of early idleness, extravagance and pride, women plunge into the depths of shame and infamy, and bid adieu to hope and joy for time and for eternity."

Thus for the article, and it certainly expresses in very strong language the very great want that is felt in this country for American skilled workmen, and also that there is arising in this community a class of young persons who are above the learning of honest trades.

Now, sir, I also wish to add as part of my remarks a letter from a gentleman of some distinction in this State, and I do not mention his name because it might not be his desire that it should be mentioned; but it also expresses in very strong language an objection to the provision that is added to this proposed section with regard to vagrant children:

"I was greatly disappointed in reading the section of Mr. Darlington's report on industrial schools to find it coupled with

a clause implying that these schools were intended for vagrant, neglected and abandoned children.

"Depend upon it, you could not more effectually prevent all other classes of children from attending these much needed schools than by attaching to it a provision of this kind. Our old Constitution contains a clause requiring the Legislature to establish schools where the poor should be taught gratis, and our public schools were a complete failure until this invidious distinction was abandoned, and the same evil fate will attend the industrial school if this unhappy clause is retained. Let the power to compel this class of children to attend schools be inserted in a separate section, and let the Industrial schools be open for all who choose to attend them, and we may hope to see a reduction in the number of unhappy young persons who grow up without having learned how to earn their own living."

I think, sir, that I could not add anything to the arguments contained in these two papers. I therefore submit to this Convention that if we are about to adopt a provision with regard to industrial schools, we should do as we do with regard to the schools for public education—open them to all classes of the community. Let the son of the rich man, as well as the poor vagrant, be entitled to go in, learn his trade, and not let him be subject to rules and conditions which must exclude him or with which he cannot comply, and let our skilled labor of America compete with that of foreign countries.

I have nothing further to add. As soon as the amendment to the amendment is passed upon, I shall ask that the section be so moulded that it may include all classes of persons, and, if necessary, to compel the attendance of vagrant children, and I hope that may be adopted in another section or by some sort of proviso.

Mr. J. PRICE WETHERILL. Mr. President: I desire to say a word upon this subject, and touch upon a matter which has not been touched upon by any gentleman who has spoken.

No one living in Philadelphia can be more impressed with the importance of just such a section as this than those who have seen the trouble and distress by which we are surrounded. And, sir, I speak for Philadelphia when I say that the vagrant and neglected children of Philadelphia have not been overlooked,

but they have been as far as is possible cared for and protected. The vagrant children of the city of Philadelphia can be taken to the mayor to-day and the mayor can send them to the homes of which there are some seven or eight scattered over the city of Philadelphia, and the vagrant and neglected children can be cared for in those homes, and the councils of the city of Philadelphia appropriate every year thousands of dollars to those homes for this privilege. Any vagrant child can be taken by a policeman, or by the gentleman from Allegheny, if he sees fit, to the mayor, and a good home and an honest trade can be given to that vagrant child. But by the action of this Convention to-day that privilege has been taken away from the city of Philadelphia, and no other equal remedy has been provided, and therefore I stand in my place and urge that something may be done by a section of this sort to take the place of the only remedy at the hands of the councils of the city of Philadelphia, the only remedy they seem to have been able to secure, so that they may take care of these poor and neglected and vagrant children. This remedy we have taken from the city of Philadelphia by our action to-day.

Mr. H. W. PALMER. What section?

Mr. J. PRICE WETHERILL. We have just passed a section by which no municipal corporation can grant or donate land or money to any church or religious society, or to any charitable institution managed by any church or sectarian denomination. These homes are supported by sectarian denominations; and the mayor of the city of Philadelphia, and the councils of the city of Philadelphia have seen fit to secure their aid and their help so that the vagrant children of the city of Philadelphia might be cared for, and might be protected and have a secure and comfortable home. The councils of Philadelphia, with a praiseworthy liberality, do appropriate year by year thousands of dollars in order that the mayor may secure that privilege; but we to-day have by our action closed the door of that charity to the mayor. We to-day have said to the councils of the city of Philadelphia, "Your vagrant children and your neglected children must continue to wander houseless and homeless through the city."

This is the condition in which by our action this city is placed, and shall we say that the State shall provide no remedy? I hope not. It is true that we have to use

denominational benevolent institutions for this purpose; but the State gives us no remedy. The evil is pressing upon us; something must be done for the vagrant children of the city of Philadelphia, no matter by whose hand protected, and no matter by whose hand cared for. The necessity is upon us, and the councils of Philadelphia were bound to secure the remedy at hand, and have for years made the appropriations to which I have alluded. By our action to-day these appropriations can no longer be made. By our action to-day we are helpless in the matter of appropriations, and therefore, we as a Convention are bound, in my opinion, to provide a remedy, having deprived the city of Philadelphia of the privilege which they have heretofore enjoyed.

Again, sir, the city of Philadelphia spends every year \$1,400,000 in the education of her children. Let any one look about him in his walks through the city of Philadelphia, and he will find dotted here and there thick over its broad expanse school houses of which any city might be proud, and of which the people of this State may well be proud. These school houses cost the city of Philadelphia millions upon millions of dollars, and they would be filled to overflowing if these 20,000 children to which allusion has been made were sent to school; but the good effects to be derived therefrom will be secured if we pass a section of this kind, or reconsider our action when the article on public education was up before, and reinstate the section which this Convention saw fit to reject.

Now, sir, I hope that the section will be passed, and I understand that the gentleman from Chester will follow it up by another section setting forth that the Legislature may pass laws compelling every child in this city and in this State to be educated. Pass that section and we shall have secured the desired result. Do this and the school houses which the city of Philadelphia has built with a free and liberal expenditure will be filled. Do that and the twenty thousand children now uneducated and without any visible means of support will be cared for, will be educated, and will hereafter secure substantial means of self-support. Let us do what the Committee on Education saw fit to recommend us to do and let us reinstate these two sections, the one now before us and the one which will be offered in a little while by the gentleman

from Chester, (Mr. Darlington,) and I think we shall have performed to-day a good and noble work.

Mr. MANTOR. Mr. President: I am more than pleased this afternoon with the course of this Convention, better pleased I believe than I have ever been since I have taken a seat in this body. The effect of introducing this subject before the Convention and calling the minds of the delegates that are assembled here from the different parts of the State to *one of the most needed reforms*, in my opinion, that could interest the minds of the delegation that has assembled in this Hall from day to day, has been beneficial. But what is their real duty? I have ever held it to be a *principle in this government that if we succeed in establishing that grand foundation on which this government has been based, education is certainly necessary, and therefore I have always favored "compulsory education."*

This proposition this afternoon reads that the "Legislature may establish industrial schools and require the attendance of *abandoned and neglected children*;" with the amendment which was offered by the gentleman from Philadelphia, (Mr. Knight,) inserting the word "shall" for "may," I most heartily concur in. Sir, it is not the city of Philadelphia alone that this question appeals to but it is to the whole State. The necessity shows itself everywhere; pauperism and crime are the sure result of a neglect somewhere in society. A well ordered system of public schools such as we have in this State goes far, very far, towards eradicating many of the evils that we have to contend with; and yet they do not meet the entire demand. We have a class of persons in every city and almost every community who fail to do their duty to those who are placed under their charge. It is for the benefit of this class and to this class that this proposition refers. I feel quite sure that if such schools are established in this State thousands and thousands of now neglected and abandoned children will be provided with suitable homes, will have the opportunity for a fairer race in life, and at the end of such race, society will have been benefited a thousand times, ten thousand for all the pecuniary cost it may be to the State. It is a duty the State owes to itself; and proud will be the day when we shall endorse this principle.

Mr. President, I did not arise for the purpose of making extended remarks, but for the purpose of endorsing and second-

ing this proposition, and I sincerely hope that this Convention may adopt this or some similar section.

Mr. BOYD. Mr. President: If I resided in the city of Philadelphia it is quite likely that I should vote for this proposition, for the necessity of it seems to be confined to the city of Philadelphia; the advocates of the measure are almost entirely from the city of Philadelphia; the statistics that have been furnished us are almost entirely of the city of Philadelphia. I shall vote against it because I object—

Mr. KATNE. Will the gentleman give way for a moment?

Mr. BOYD. I should rather go on while I have the heat up.

Mr. KATNE. The honorable chairman of the Committee on Education, who has this article in charge, has just informed me that he had to leave here a few moments before half-past six and could not be here to participate further in the proceedings upon this question? Therefore, if agreeable to the Convention, I will make a motion now that this Convention adjourn. I move that the Convention adjourn if the gentleman gives way.

Mr. BOYD. I do not give way. ["Go on."]

The motion was not agreed to.

The PRESIDENT *pro tem*. The gentleman from Montgomery will proceed.

Mr. BOYD. I was going on to say that I shall vote against this proposition because I object to the counties who have none of these delinquents, or at least very few of them within their borders, paying the expense, and I am opposed to my county paying large sums of money in the future for the education of this class of people. I hold it to be the duty of the city of Philadelphia to incur that expense, if it should be necessary.

I have yet to learn that there existed in Montgomery county to any extent the class of persons that this section is intended to provide for and protect; and the people of Montgomery county, as I have said, will never agree to be taxed for the support of this class in the city of Philadelphia or any other large city where they are numerous.

Mr. KNIGHT. I would suggest to the gentleman, if he will allow me, that Norristown will soon be a large city.

Mr. BOYD. Norristown is a city; but we have no statistics from that city nor can any be obtained from that county showing the exhibition, or approaching it even,

which has been furnished to us by gentlemen residing in the city of Philadelphia and the majority of the counties in this State.

Mr. WHERRY. I desire to ask the gentleman if he has ever seen the statistics of Montgomery county on this subject.

Mr. BOYD. No, I have not.

Mr. WHERRY. I will show them to the gentleman if he will come to my desk.

Mr. BOYD. I shall be very happy to see them, and I doubt very much that you can show to any great extent that class of people in the county of Montgomery.

Mr. WHERRY. I can show the gentleman that there are twelve hundred children in his county between the ages of eight and twenty-one who cannot read and write.

Mr. BOYD. I have no doubt of that, and so you can in almost any county in the State of the same population. But they are not the class of people you are undertaking to provide for as I understand it, but a class of people whose morals have been neglected and where no efforts have been made to redeem them and make them moral, and you seek now to impose on the broad Commonwealth a tax for the purpose of maintaining and supporting an evil which exists mainly in the city of Philadelphia.

I take it that my remarks will apply to the majority, yes, nine-tenths of the counties of this State, that the people of this State are not burdened with that class at all; and wherever they do exist, as they must exist in every county to some extent, ample means and provisions are always ready to be made to take care of them, and I maintain that it is extremely unjust and unfair to impose a burden of this kind on the counties throughout this State who have a very inconsiderable number of that class of people to support. It is for these reasons that I shall vote against the whole thing from top to bottom.

Mr. KATNE. Mr. President: I should have preferred in this article on education to have adopted simply the first section:

"The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this Commonwealth above the age of six years may be educated."

That would be a sufficient charter, in my opinion, for the Legislature to establish all kinds of schools for the education

of all the children in the Commonwealth and also the kind of schools provided for in this amendment. It was with the view of giving the Legislature the largest liberty on the subject of education, that I voted against the second section of this article providing that the Legislature should appropriate a million of dollars annually for the support of common schools. I feared that a provision of that kind in the Constitution would be taken by the Legislature as a limit, and that it would appropriate that sum and no more; that for years to come that would be looked upon by the Legislature as a limit beyond which they would not go. I know it says "at least;" but I know that the Legislature on the subject of appropriations for common schools and educational purposes has been very careful to make the sums very small. The sums heretofore appropriated by the General Assembly of the Commonwealth for the purposes of common schools have been a mere pittance, nothing more than enough to keep the establishment at Harrisburg going. I hope to see the day, and that not very far distant, when a much larger sum than a million of dollars—yea, thrice that sum—will be appropriated by the Legislature of Pennsylvania for the support of the common schools of this Commonwealth.

I therefore would rather have confined this article to the first section; but it seems to be the desire of the Convention to do otherwise; but I am not willing to go with the gentleman from York (Mr. Gibson) to provide for establishing general mechanical establishments by the Legislature of the State for all persons. I want to confine it, if at all, to the kind of people that are named in this section, those that are found in cities like Philadelphia and other large towns and cities in this Commonwealth. They are persons that ought to be provided for. They are the persons that I suppose are intended to be provided for by this section—poor, indigent and neglected children, such as have been described here so well by the gentlemen on my right from Washington (Mr. Hazzard)—those foreign children that are now in the streets of Philadelphia and other towns and cities of this Commonwealth. If put in educational establishments where they can be fed and clothed and educated and learn mechanical occupations, they will then become important and valuable citi-

zens to the Commonwealth. I am not like the gentleman from Montgomery; (Mr. Boyd;) I do not care whether they come from Philadelphia or Pittsburg, or from any other county in the Commonwealth. If they are the kind of children that are contemplated by the section under consideration, they may be placed in institutions of this kind.

Our system of common schools as now conducted under the acts of Assembly of this Commonwealth will not accomplish this purpose. The common schools have no power to clothe children and feed them and teach them mechanical occupations. That requires a different kind of system from any that we have ever had in Pennsylvania or any that we desire to have for the general education of our people. I do not desire that the children of all persons, as is contemplated by the gentleman from York, should go there, but just such as are contemplated by this section.

The gentleman from York is mistaken, and the gentleman whose letter he read is mistaken, in regard to the system of common schools in Pennsylvania. The letter from which he read states that it was not until the Legislature provided that all should be taught together in the same schools, that up to this time the common school system of Pennsylvania had been a failure. Sir, up to 1831, there had been no common school system in Pennsylvania. The article of the Constitution of 1790, which authorized the Legislature to provide a system of common schools at which the poor should be taught gratuitously, had been on the statute book for forty-one years before anything was done under it except a provision in an act of Assembly of 1825 that made some provision for the creation of a common school fund; and it was not until 1831 that an act of Assembly was ever passed under the Constitution of 1790 providing for the establishment of a system of common schools. Forty years had that constitutional provision been in force in Pennsylvania and nothing done under it. Strange as it may appear, and strange as it is, the Convention of 1837-'38 adopted that provision from the Constitution of 1790 *verbatim et literatim*, added nothing to it, let it remain as it was, although the common school system of Pennsylvania then was in its infancy.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment,

striking out the word "may," and inserting "shall."

The amendment to the amendment was agreed to.

The President pro tem. The question recurs on the amendment to the amendment.

Mr. CAMPBELL. I hope this amendment will not prevail. I should like to call the attention of the Convention to where they are drifting. When the gentleman from Cumberland (Mr. Wherry) first offered the amendment, the Convention laughed at him. There was a universal —

Mr. WHERRY. Will the gentleman give way until I make an explanation which is really due to myself? The words which caused the merriment were really no part of the amendment at all, but were hitched on by my friend from Tioga (Mr. Niles) thoughtlessly, for the very purpose of being stricken off in order that I might make my speech. [Laughter.] I make this explanation in justice to myself.

Mr. CAMPBELL. Very well. Now, Mr. President, what will be the practical effect of this section? If it be adopted, we shall declare that the State of Pennsylvania is to provide schools enough to take care of, feed, clothe, and educate, all those children that gentlemen here denominate as "vagrant, neglected and abandoned." This of itself is a huge undertaking; and I would ask the members of the Convention to look at it seriously before they commit themselves finally to vote for it.

Can the State of Pennsylvania do this thing? Can it, year after year, appropriate immense sums of money for the purpose of carrying on these industrial schools? Can we, out of the Treasury of the Commonwealth, provide schools for these twenty thousand children in the city of Philadelphia, that are so pathetically spoken of? Will the people of the Commonwealth submit to be taxed for such enormous appropriations as will be required for the support of these schools?

Mr. President, outside of the money consideration involved in the establishment of such a system, there is another matter to which I wish to call the attention of members. How will the administration of this proposed scheme be carried into effect? How will these vagrant and neglected children be collected and put into these schools? Is it intended merely to provide schools and then invite vagrant children to come to them? That of it-

self would be an absurdity. If they are the class that they are represented to be, you cannot get them to go to school voluntarily; you must provide your State officers, your State agents in every county to take them from the streets and put them into the schools. Then, after you do provide your State agents, your State police, or whatever you choose to call them, you have to make your schools prisons; if you allow them to have open doors the children will go out again; in plain language, you have to establish numerous houses of refuge throughout the State at the public expense for the maintenance and education of neglected and abandoned children. Are we prepared to do that? Are we prepared to say to the people of Pennsylvania that their Legislature must every year appropriate money for the establishment of *prisons* in which to incarcerate the children taken from the streets, or, perhaps, taken from their homes, and in which such children will be provided for, clothed, fed and educated?

Mr. President, there is another feature of this proposed scheme which to my mind is the most dangerous of all. It will, under color of reclaiming vagrant, abandoned and neglected children, allow your State agents, who may become the mere officers of religious denominations, to go into the houses of private citizens, and on the plea that the fathers or the mothers or the guardians do not educate in the proper way the children entrusted to their care, take them out of their homes and put them into the proposed prison schools. Will you permit that? Will you permit the State to be turned into a machine for religious persecution? That will be the effect of it. That will be one of the first results of it.

I believe that the first section of this article is a good one. In my opinion we should provide ample means for carrying on our public schools. I am perfectly sincere in my belief that the public school system of Pennsylvania is a good one. I myself owe my education to it. I have been educated in public schools from the time I was six years of age until I was seventeen, from the lowest up to the highest of them, and I believe they are good institutions. I believe that the State should appropriate all the money that is necessary for perfecting the common school system and making it still more useful. But I do protest against the passage of the section

now before us, incorporating as it does a principle of compulsory education of the kind proposed into the Constitution of Pennsylvania. What the gentlemen who advocate this section declare they wish to effect, can be accomplished by having your school system so perfected that it will invite of its own accord all the poor children of the Commonwealth to come to the public schools provided for them. The reason now that such a large percentage of your population will not attend your public schools, is because your public schools are run in many instances in the interest of sectarian denominations. You will find that large numbers of the people do not regard them with favor because the religious faith of their children is tampered with and attempts are made to pervert those children from the faith that they believe in; and, Mr. President, that is the danger that we have to fear from a section of this kind. If we have the danger under our present system as it is now, when it is not compulsory, how much more danger will there be when it will be compulsory. How much danger will there be when you will allow a State officer to go into a man's house, take out a child and put that child into a house of refuge, or perhaps allow him to walk into a religious orphan asylum and on the plea that the children in that orphan asylum have been neglected and abandoned, take those children out of the asylum and put them into a State institution?

I tell you if you attempt to enforce anything of that kind, the people of this State will, sooner or later, reverse your action.

I do protest against the passage of this section, and I hope the good sense of the members will lead them to vote it down. We voted it down in committee of the whole, and I hope we shall do so here. The true course is to so perfect your common school system as to remove all sectarian influence from it and make it inviting to all the people of the State to send their children to reap the benefits to be derived from it. By doing this you will get clear of your difficulty, and have your large class of neglected and vagrant children provided for.

MR. ANDREW REED. I desire to state the reasons for the vote which I expect to cast. Were I in the Legislature I should vote for a section of this kind. I am in favor of its principle; and had the section remained as originally moved by the chairman of the Committee on Education,

(Mr. Darlington,) I should have voted for it; not because the Legislature would not have the power without it, but for the sake of showing the favor of the Convention to that measure. But this Convention having adopted the amendment of the gentleman from Philadelphia, (Mr. Knight,) making it compulsory on the Legislature to do it, I shall vote against the section, because I believe the matter should be left to the Legislature, and then if it does not work well it can be repealed.

MR. HANNA. Mr. President: I fear that quite a number of the members, in discussing this question, have confounded compulsory education with the establishment of industrial schools. The subject before us is not compulsory education, but a section requiring that the Legislature shall establish industrial schools where neglected children shall be taught mechanical pursuits.

That is a very different question; and for one I am not prepared to vote in favor of compelling the Legislature to do this very thing. The first section of this article covers the entire subject; and as has been well stated by the gentleman from Mifflin, this is a question entirely for the Legislature. Why, sir, what are we about to do? Authorize the establishment and the location in four, or five, or half a dozen different sections of the State of institutions governed by State officers, with their agents and their police authorities. Why, sir, they cannot be organized without it, and I submit they will in time become unpopular and the source of complaint.

Again, it will impose a vast burden of expenditure upon the State at large. As my colleague from Philadelphia referred to that subject, I will not again advert to it, but I do insist that the State now, the people at large, are not prepared to introduce into the Constitution of the State any such principle as this. Why, sir, our soldiers' orphans' homes and other institutions under the charge of the State have been from time to time the source of very serious criticism. Time after time have charges been made in the Legislature against the improper management and control of those institutions; and for one I am not willing to increase the number of such institutions. I think that all the State at large has to do is to provide for the expense of our common schools, and as regards compulsory education, I submit that is a question which should be left to the school authorities of the several

school districts of the State. Let the Legislature confer upon the boards of education throughout the State such authority as will enable them to introduce compulsory education, in such a manner as will meet with the favor and approval of the people.

In the State of Massachusetts they have a form of compulsory education which as far as I know meets with the approval of the people, but they make no distinction between the children. They have their truant officers going about the streets of Boston and other places throughout the State, and they have the power whenever they see a boy they think should be at school to question him, to examine him, and if they find him to be a truant to conduct him back to his school-house. That is as far as we should go.

I cannot close without alluding to another remark of my colleague (Mr. Campbell) from Philadelphia. In referring to our common schools, he has pronounced them to be under sectarian rule and government. That, sir, I deny.

Mr. CAMPBELL. I rise to an explanation. I did not say any such thing. I said that in many instances schools are run in the interest of sectarian denominations, and I say now that this sectarian influence is becoming so general that at least one religious denomination has withdrawn its children from the public schools.

Mr. HANNA. The gentleman has attempted to explain; but he did, in his

seat, say that the common schools of Philadelphia were sectarian institutions and that the effect of them was to pervert the children from the faith of their fathers. That, sir, I deny. From the earliest establishment of the common schools of Philadelphia no one ever complained of them but one single denomination. Why? Because the Holy Bible was read in our public schools; that is all, and if that is sectarian, I should like to know it.

Now, in regard to the question before us, I do submit that this proposition should not be agreed to, because it belongs to the Legislature of the State to make such rules and regulations, to pass such acts of Assembly as will perfect our common school system. This is provided for in the first section of the article.

Mr. GIBSON. I offer an amendment to the amendment. I move to strike out all after the word "schools," and insert the following:

"For the children of the Commonwealth the Legislature shall provide by law for the selection of proper skilled mechanics and the establishment of proper places and buildings at the public cost, in which said children may be instructed in the arts and mysteries of useful trades."

Mr. C. A. BLACK. I move that we adjourn.

The motion was agreed to, and at six o'clock and fifty-four minutes P. M. the Convention adjourned.

ONE HUNDRED AND TWENTY-SEVENTH DAY.

WEDNESDAY, June 25, 1873.

The Convention met at nine 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.

LEAVES OF ABSENCE.

Mr. DARLINGTON asked and obtained leave of absence for Mr. D. N. White, for a few days from to-day.

Mr. WHERRY asked and obtained leave of absence for himself, for a few days after to-day.

PLACE FOR SUMMER SITTINGS.

Mr. BRODHEAD. Mr. President: I offer the following resolution:

Resolved, That a committee of five be appointed by the President to inquire what facilities are afforded by different places for the sitting of this Convention during the summer months, and report at their earliest convenience.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted ayes 37, noes 31.

The resolution was read a second time and considered.

Mr. J. N. PURVIANCE. I move to amend by striking out "five" and inserting "three" as the number of the committee.

The amendment was rejected.

Mr. LILLY. I move to strike out "five" and insert "the committee of the whole."

The PRESIDENT *pro tem.* That is not in order.

Mr. KNIGHT. I move to postpone the further consideration of the resolution.

The PRESIDENT *pro tem.* The question is on postponing the consideration of the resolution.

The question being put, there were a division, ayes 34, noes 38.

Mr. BOYD. I call for the yeas and nays, Mr. President.

Mr. EDWARDS. I second the call.

Mr. STANTON. I trust the Convention will either accept it or postpone it, and not spend another day on this question.

The PRESIDENT *pro tem.* The yeas and nays are ordered, and the Clerk will call the roll.

The yeas and nays being taken, resulted as follows:

Y E A S .

Messrs. Achenbach, Andrews, Bailly, (Perry,) Bannan, Bardsley, Bigler, Black, Chas. A., Boyd, Broomall, Bullitt, Calvin, Carter, Darlington, Edwards, Fulton, Guthrie, Hall, Hay, Hemphill, Kaine, Knight, Lawrence, Lilly, Littleton, M'Camant, M'Culloch, Mann, Mantor, Mott, Palmer, G. W., Palmer, H. W., Patton, Porter, Pughe, Purman, Purviance, Samuel A., Rooke, Smith, H. W., Stanton Turrell, Wetherill, Jno. Price, Wherry and Wright—43.

N A Y S .

Messrs. Ainey, Alricks, Baer, Bailey, (Huntingdon,) Beebe, Black, J. S., Bowman, Brodhead, Brown, Church, Cochran, Corbett, Cronmiller, Curry, Curtin, Davis, Dunning, Elliott, Ellis, Ewing, Funck, Gibson, Gilpin, Greene, Hazzard, Horton, Hunsicker, Lambertson, Long, MacConnell, M'Clean, M'Murray, Minor, Niles, Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Runk, Russell, Struthers, Van Reed, Walker, Wetherill, J. M., White, J. W. F., and Woodward—46.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks, Armstrong, Baker, Barclay, Bartholomew, Biddle, Buckalew, Campbell, Carey, Cassidy, Clark, Collins, Corson, Craig, Cuyler, Dallas, De France, Dodd, Fell, Finney, Hanna, Harvey, Heverin, Howard, Landis, Lear, MacVeagh, Metzger, Mitchell, Newlin, Patterson, D. W., Read, John R., Reynolds, Ross, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple, White, David N., White, Harry, Worrell and Meredith, *President*—44.

Mr. BIDDLE. Mr. President—

The PRESIDENT *pro tem.* The motion is not agreed to.

Mr. BIDDLE. I desire to vote.

Mr. WOODWARD. I object to that vote being recorded. It was given after the Chair had declared the result.

The PRESIDENT *pro tem*. If objected to, it cannot be recorded.

Mr. BIDDLE. I rose and addressed the chair before the vote was announced.

Mr. WOODWARD. What I stated was absolutely true. The vote of the gentleman from Philadelphia was cast after the decision of the chair was declared, and I object to any vote being received after the Chair has announced the result.

The PRESIDENT *pro tem*. The vote cannot be received, as objection is made. The question recurs on the resolution.

Mr. J. PRICE WETHERILL. On that question, I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The yeas and nays were taken, and were as follow, viz:

YEAS.

Messrs. Ainey, Alricks, Bailey, (Huntingdon,) Beebe, Black, J. S., Bowman, Brodhead, Brown, Buckalew, Calvin, Cochran, Corbett, Cronmiller, Curtin, Davis, De France, Dunning, Ellis, Ewing, Funck, Gibson, Green, Hazzard, Hunsicker, Lamberton, Long, MacConnell, McClean, McCulloch, Minor, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Rooke, Runk, Russell, Smith, H. W., Struthers, Temple, Van Reed, Walker, Wetherill, J. M., Wherry, White, J. W. F. and Woodward.—50.

NAYS.

Messrs. Achenbach, Andrews, Armstrong, Baer, Baily, (Perry,) Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Boyd, Broomall, Bullitt, Campbell, Carey, Carter, Church, Clark, Curry, Dallas, Darlington, Edwards, Fulton, Gilpin, Guthrie, Hall, Hay, Hemphill, Horton, Kaine, Knight, Lawrence, Lilly, Littleton, McCamant, McMurray, Mann, Mantor, Mott, Patton, Porter, Pughe, Purman, Stanton, Turrell, Wetherill, John Price and Wright—47.

So the resolution was agreed to.

ABSENT.—Messrs. Addicks, Baker, Barclay, Bartholomew, Cassidy, Collins, Corson, Craig, Cuyler, Dodd, Elliott, Fell, Finney, Hanna, Harvey, Heverin, Howard, Landis, Lear, MacVeagh, Metzger, Mitchell, Newlin, Patterson, D. W., Read, John R., Reynolds, Ross, Sharpe, Simpson, Smith, H. G., Smith, Wm. H.,

Stewart, White, David N., White, Harry, Worrell and Meredith, *President*—36.

Mr. H. W. PALMER. Mr. President: I have received a telegram, which I ask may be read.

The CLERK read as follows:

WILKESBARRE, June 24, 1873.

H. W. Palmer, *Constitutional Convention, Philadelphia:*

The city of Wilkesbarre invites the Convention to hold its sessions here. Every provision will be made for the convenience and comfort of its members in and out of session.

H. M. HOYT,
G. M. HARDING,
STANLEY WOODWARD,
CHARLES PARRISH,
W. LEE, JR.

Mr. EWING. I move that the communication be referred to the committee to be appointed under the resolution just passed.

The motion was agreed to.

EDUCATION.

The PRESIDENT *pro tem*. The first business in order is the consideration of the article on education, the question being on the amendment offered by the gentleman from York (Mr. Gibson) to the amendment of the gentleman from Chester (Mr. Darlington.) The amendment to the amendment will be read.

The CLERK. The amendment to the amendment is to insert after the word "schools," the words, "for the children of the Commonwealth, and shall provide by law for the selection of proper skilled mechanics and the establishment of proper places and buildings at the public cost to which said children may be instructed in the arts and mysteries of useful trades."

Mr. PURMAN. Mr. President: The section as proposed by the delegate from Chester provided that "the Legislature may establish industrial schools and require the attendance of vagrant, neglected and abandoned children," and the amendment follows in its wake.

Mr. President, I regard this proposition as a very mischievous and dangerous proposition for several reasons. In the first place, it employs terms that are exceedingly vague and undefined. What children are "neglected" so that the strong arm of the Commonwealth should be employed for the purpose of picking up a child here and there on the streets and in

the townships throughout this Commonwealth? Where would the line begin when you should say a child was not neglected and where would it end where you would say a child was neglected? The whole theory of our government is based upon the idea that the parents have the right to control their children, and not until they have ceased to make any provision for them whatever, has the State a right to come in and take the children out of their hands, and say to them, they have been neglected. What I might regard as gross neglect on the part of parents as to the industry of the child or the education of the child, my neighbor might regard as the highest care. The State has no right to compel the children of the State to labor as long as the parents maintain them. The State has no right to compel any citizen of the Commonwealth to labor as long as he may maintain himself.

This is not merely for "abandoned" children, such as may be found in the streets of the city of Philadelphia and other cities of the State, but it is for those who are "neglected" by their parents. "Neglected" in what? Neglected in their religious training? My good Presbyterian neighbor would come along to me and say, "I am sorry that you are so unmindful of the interests of your children; here you have a son and a daughter which have reached fifteen or sixteen years of age, and those children have not yet been baptized. Why should you be so neglectful of the best interests of your children, for their morals here and their life hereafter?" I would smile in the gentleman's face and I would tell him that those waiting at Jerusalem for the promise made to their fathers baptized none but believers, and that I had an abiding confidence in that doctrine; I was holding fast to the doctrine of the fathers.

I might come along and say to my Catholic neighbor, "Why do you carry your children off to the Cathedral and point them to the cross and the Virgin Mary, and all the balance of the paraphernalia of that Church? Are you not likely to destroy the moral and religious sentiments of your child?" He would answer, "Why, sir, this is the mother Church. This I regard as the highest teachings my child can receive."

Has the Convention thought for a moment where this proposition will lead us? It is mischievous indeed, and would lead

to the destruction of the power of parents over their children, lead to religious conflicts the end of which no man can foresee. Perhaps this argument may excite a smile on the faces of delegates and may not reach their thoughts, may not be sufficient to arouse their energies and make them reflect what they are about to do. I want it to appear in the Debates of this Convention that the mischievous and dangerous consequences of this section was most fully pointed out, and then let the Convention do whatever it may see proper. This is a rock upon which the State will burst into fragments—a stumbling block and a pitfall. The principle involved in this section is a total disregard of the inalienable right to the enjoyment of life, and the unfettered pursuit of happiness. It violates the natural rights of parents over their children, and the rights of conscience of both the parents and the children. The first section of this article establishes "a thorough and efficient system of public schools wherein the children of this Commonwealth may be educated." From this it will be seen that ample provision is made to educate all the children of the State, but the section of the gentleman from Chester proposes to "require" the attendance of all the children. This would enable the Legislature to pass laws authorizing such authorities as it might create to enter the house of each man and enquire how he was educating his children, and finally to carry them away if they supposed they were neglected in their education. This I submit violates all the principles of religious *freedom* and *equality*. This article contains in it the spirit which drove Rodger Williams out of Massachusetts, and are akin to Smithfield and Oxford. This system of compulsory education and compulsory moral reform, however plausible on the outside—inasmuch as they profess to cure ignorance, idleness and vice; infirmities and evils detrimental always to public life and destructive of the common welfare—is one of great difficulty and delicacy, but in its vigor and life is destructive of the liberty of men and women to keep their children at home and educate them in their own way.

Mr. BAER. Mr. President: I am heartily in favor of the amendment of the gentleman from Chester; but I voted yesterday in favor of striking out "may" and inserting "shall." On mature deliberation I have come to the

conclusion that that vote was wrong. Much as I am in favor of all that is contemplated there, I cannot conceive that it would be proper for the members of this Convention to incorporate such a provision in the fundamental law. I fear that to do so will have the effect of estranging many of the friends of the instrument from voting for it when it comes before the people for adoption. The eloquent address of the gentleman from Cumberland, (Mr. Wherry,) and the simplest story told so well by the gentleman from Washington, (Mr. Hazzard,) had the effect yesterday to unman this Convention, and they were on the very eve of doing what they would regret in the future by incorporating in the fundamental law a principle which may or may not be of great advantage to the State, but which it is not wise in the Convention to insert here. For that reason the word "may" should be restored if you go so far as to adopt the amendment of the gentleman from Chester, and I now move, in order to bring this matter before the Convention, a reconsideration of the vote by which "shall" was inserted and "may" stricken out, so that "may" shall again be inserted.

The PRESIDENT *pro tem.* The gentleman rises to a privileged question.

Mr. BAER. Yes sir.

The PRESIDENT *pro tem.* The gentleman from Somerset moves a reconsideration of the vote on the amendment of the gentleman from Philadelphia (Mr. Knight) to the amendment of the gentleman from Chester striking out "may" and inserting "shall."

Mr. LILLY. I second the motion.

Mr. DARLINGTON. That is not in order at this time. We have another matter under consideration.

The PRESIDENT *pro tem.* The motion will be a subsequent question. The question now is on the amendment of the gentleman from York (Mr. Gibson) to the amendment of the gentleman from Chester (Mr. Darlington.)

Mr. DARLINGTON. I want to say one word before the vote shall be taken on this amendment. Some gentlemen seem apprehensive —

The PRESIDENT *pro tem.* I believe the delegate spoke to this point yesterday.

Mr. DARLINGTON. Not on this amendment.

The PRESIDENT *pro tem.* If the gentleman did not, he will proceed.

Mr. DARLINGTON. I was about to say, and I will say it in a very few words, that the apprehension of some of the gentlemen as to the difficulty of determining who are vagrants, who are neglected and who are abandoned children, is rather fanciful than real. I do not think the community have any difficulty in deciding when a child is a vagrant child, any more than a magistrate, the least informed in the country, has in deciding who is a vagrant grown person. What is meant by "neglected children?" Those whose parents or natural protectors do not afford them necessary protection and care, everybody understands. "Abandoned" are those whom their parents and guardians abandon to the charity of the world. No more difficulty exists, therefore, in the Legislature defining, or in the officers of the law who may be entrusted with the duty, determining who are vagrant, neglected and abandoned, than there would be in determining who now is a pauper and entitled to charity.

I apprehend, Mr. President, there is no more sacred, no more holy, no more imperative duty resting upon the community than to take care of the poor and neglected and abandoned. No more holy duty rests upon us than to see that every child in the community shall be educated so as to fit him for the duties of citizenship. Does any gentleman fear that if this Convention shall merely recommend to the Legislature or choose to order the Legislature to take care to provide for instruction in the industrial arts of neglected, vagrant and abandoned children, we thereby endanger the safety of this Constitution? It is probable that any gentleman within the sound of my voice has any fear about the response that will be given by the people of the State with one universal voice on a question like that? If we suppose that the people of this Commonwealth are in favor of ignorance, vice and crime, then let us make the worst Constitution that we can, and go home and submit to our fate. But if we are here as statesmen to provide what is best for the whole community, let us not flinch or hesitate in doing that which every man in his conscience believes ought to be done. The State has the duty of the care of the poor. As the Scripture says—and I am not apt to quote it often—the poor we always have with us, and we probably always shall have the poor with us; and those who are more fortunate have the

solemn duty imposed upon them of taking care that the poor do not suffer unnecessarily by the circumstances of their position. We are to have a care over society that crime shall not prevail; that society shall be safe; that every man shall be educated. It is the very foundation, I need not tell this Convention, of our institutions themselves. They rest upon the integrity and the intelligence of the whole people. I would like to see the man who has the fear of the popular judgment before his eyes, and for that cause should hesitate to vote in favor of providing, at the expense of the State, to take care of the neglected and abandoned children of the State so as to make them honest men, make them industrious men, make them artisans, make them mechanics, fit them for every condition of life, and make them good and useful citizens. It is money well expended.

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

Mr. DARLINGTON. I have no objection.

Mr. MACCONNELL. Does the gentleman know that there are seventy-five thousand of these children in the State; and will he explain to us how much money it will take to buy ground and erect the necessary houses and put up the buildings and provide furniture and provide them with the necessary teachers and implements in order to accommodate those seventy-five thousand children?

Mr. DARLINGTON. I have not stopped to inquire what the cost will be. If a man comes to my door seeking charity and in distress, it is not my business to inquire how he came so. In such a case as this, it is no part of our business to inquire whether we can do this thing. We all know that we can, and we all know that we must. We know that that class of the community must either prey upon us and live upon us by thieving and by crime, or they must be instructed and directed how to take care of themselves by proper education, and by proper training. It is not a question whether it will cost so many dollars and cents, either more or less. It is a duty that rests upon us, that rests upon every community, from which we cannot shrink, if we would, and from which we dare not shrink if we could. We must appropriate enough money to carry out these objects if we wish to make good citizens of these neglected and abandoned children. The State is able to do it. Will any man tell me that she can not?

Look at the returns made by your census officers! In the county of Chester, small as it is, we have not less than seventy millions of property. I do not pretend to give the exact figures, but we have in this whole Union, according to the census returns, property of the value of forty thousand millions of dollars. Then let us never say that we cannot take care of a few neglected and abandoned children. They are small in number in comparison with those that are better off, the happy members of the community. The consideration of the expense should be discarded. The expense is nothing. It may be \$10,000 or \$100,000 or \$1,000,000, but whatever it is let it be made. The great State of Pennsylvania should never flinch from an appropriation of whatever may be necessary to save our citizens from this vice of ignorance that is growing up all around us.

Mr. BOWMAN. I have no disposition to protract this discussion; but I regard this question as one of the most important which this Convention has had under consideration. At a very early stage of its sessions, I had the honor to introduce a resolution which was referred to the Committee on Education, looking to the establishment of a system of compulsory education in the State. I believed then, as I do now, that the safety of the State and the safety of the government depends upon the education of all the children. If we would preserve republican institutions, if we would preserve our present form of government, it is absolutely necessary that all the children in the Commonwealth and in the United States should be educated.

Let us look at this question fairly. Last year there were expended in this Commonwealth over eight millions of money to defray the expenses of the common school system of the State. Over five millions of that money were wrung from the pockets of the tax-payers of the Commonwealth, and we have the fact before us that there are over seventy-five thousand children between the ages of six and twenty-one years who never have entered a school-house door.

I am in favor of this proposition if I cannot get anything better. I believe that it is important that all the children of the Commonwealth should be compelled to attend the public schools. It was argued yesterday that it would entail a very great expense upon the Commonwealth, and that it would be impossible almost to

erect buildings for the purpose of feeding and clothing our indigent and abandoned children. We have to take care of these children now. So far as their food and clothing are concerned, they are to be provided for at the public expense, and this section and its amendment simply look to the education of that class of children for the support of which we are already compelled to provide. What was it that gave the Prussian army such decided victories over the French in the recent contest between those powers? What was it that enabled the Prussians to gain victories over the French at Gravelotte and at Sedan, and enabled them to carry to the walls of Paris the approaches by which that city was compelled to surrender to the Prussian army? It was simply because the Prussians were educated, not only in the arts of war and the manual of arms, but in the sciences, that gave them the advantage over the French army, that compelled the surrender of the proudest and gayest city in the world.

In view of the expenditures of public money it is important that we put something in the Constitution that will compel the Legislature to pass a law providing for the education of all the children in the Commonwealth. The safety of the State depends upon it. The welfare and future prosperity of the people depend upon it. You erect school houses, you employ teachers, you throw wide open the doors of the public schools throughout the State, and invite the children to come in. Yet seventy-five thousand of them stay away. Their parents, their guardians, those having them under their control, refuse to send these children to school. The result of it is that they grow up in ignorance and in crime. Does not that ignorance and crime entail upon the State an expense far greater than would be the cost of their education? It would be far better to support the children in the public schools than to support them in the almshouse, in the jails and in the penitentiaries. It would be to the interest of the State to educate them first, and then in the end the State would make a very large pecuniary saving.

The proposition of the gentleman from Philadelphia leads to the education of children and it is objected that these are a class of abandoned, neglected children. Well, the rich provide for their children. Those who are able to send their children to school usually do it, and the exceptions are very few. I once heard of a man of

wealth who refused to educate his children for the reason that as soon as his eldest boy learned to write he had counterfeited his father's name, and he was determined that if his children were prone to do evil their ability should be limited and they should be rascals upon a limited scale. We have, unfortunately, a few men in this Commonwealth belonging to that class who are able to educate their children, but do not. It is creditable that they are few, and it is to be hoped they will become less.

In view of the importance of this question, I hope that the proposition of the gentleman from Cumberland, with the amendment of the gentleman from Philadelphia, will prevail. As was said yesterday, we had in the Constitution of 1790 a similar provision, that is, that the indigent children and the poor should be taught gratis, and that the Legislature might provide means for the education of these children. But it was more than forty years before the Legislature adopted any measures looking to the education of all the children in the Commonwealth, and it is but recently that all the school districts in the State have adopted the present common school system. Do I under-rate this question when I say it is important? It is important. It is one that should interest every delegate on this floor. If the tax-payers of this Commonwealth are to pay out of their pockets annually over five millions of money they are entitled to know how that money is spent and they are entitled to receive therefrom some benefit.

One word more and I am done. Thousands and thousands of the tax-payers of Pennsylvania to-day, and ever since the organization of the common school system, have paid their school taxes and have never received a particle of benefit therefrom personally. They have no children to send to the common schools and that is why they are not directly benefited by this great system. Still they are compelled to pay their money for this particular purpose, which has in view the accomplishment of a particular object, although they cannot be benefited in the education of their own children, for they have none. Even by some of those who have children the benefits of the common school system are not enjoyed. They send their children to be educated at private institutions in other States, remote from home, and to the seminaries and colleges scattered all over the country. Nevertha-

less they are bound to pay their taxes and do pay them without receiving any personal benefit therefrom.

Now, unless this proposition or something similar to it is adopted, we may as well abandon the common school system altogether.

The PRESIDENT *pro tem.* The gentleman's time has expired.

Mr. KNIGHT. My object in offering this amendment, striking out "may" and inserting "shall," was in part to do away with special legislation. If we pass the section submitted by the gentleman from Chester it will simply be that the Legislature may make this appropriation. That will only call out in the Legislature as many different opinions as there are in this body, and influences will be brought to bear upon the Legislature to control their action in the premises. My idea simply is that if this measure is proper and worthy to be carried out, it is better for us to provide that the Legislature *shall* do it. I know no body better able to judge upon this subject than the one hundred and thirty-three gentlemen assembled in this Convention. Let the decision be made here. If the provision is not proper, let us vote it down entirely; but I think it is proper.

As I said yesterday, I think if we would pay more attention to this class of abandoned and poor children of the Commonwealth and less attention to that portion of our children who are educated in the high schools, where they are taught the languages and the higher elements of education of which they do not probably stand in need to fit them to become good citizens and enable them to earn an honest living, and devote the time and money thus used to these poor and destitute classes, we should, perhaps, accomplish a greater good than we are now securing. We might receive the curses of the parents and masters of these children; but when they grow up we shall receive their praise and blessings.

What is the situation to-day? There are so many idle children in this city that if there is any excitement at the corner of a street, you will find five hundred of these idlers there. This would obviate that to a very great extent, remedying that great evil of vice and idleness which is broadcast all over the land.

In addition to that, it is stated that there are seventy-five thousand children of this class in the State; that would be about one to every fifty of the popula-

tion. Now, I take it for granted that if this provision were in force, many of the parents of these children not wishing them to go into these industrial schools would give them some attention, be forced to take care of them themselves, and I believe the result would come to this: That there would be more than one out of four at present existing, reducing it probably to eighteen thousand seven hundred and fifty, which would be only one out of two hundred of the population of the State.

I trust, sir, that this amendment will not be voted down. I think that there is a great deal more in a preventive than there is in a cure. Let us prevent this evil, and if we adopt this amendment and carry this provision into effect as a part of the fundamental law of the State, made by this Convention, we shall then adopt a remedy to prevent this state of things in the future, or at least that is my opinion.

Mr. BULLITT. Mr. President: I know that this is not the time to say anything that seems adverse to general education, and I suppose there is no one in this Convention who more thoroughly and more fully appreciates the value of education than I do myself; but it does seem to me that the gentlemen of this Convention under-rate the values of the system that now prevails and over-rate the proposed good effects from the one which is proposed to be introduced, and I do not think that they properly appreciate the evils which are likely to grow out of the introduction of this compulsory feature into the Constitution.

The gentlemen of this Convention have shown, as far as I am able to judge from the short time I have been in it, and from the observation I have been able to give of the work which they already done, a most tender regard for the rights of the citizens in almost every respect, their rights of person, their rights of conscience, their rights of speech, their rights of property, and while you have been apparently so guarded, so careful, so tender of the rights of the people in these respects, it is now proposed to introduce a feature which seems to me to be inconsistent with the previous action and opinions and sentiments that seem to have prevailed among you. There are evils growing out of the too great freedom and licentiousness of speech and of the press. There are evils growing out of the abuses of the other rights of the people which you

have endeavored to guard and protect, and yet, Mr. President, it has been recognized, not only in this State, but throughout this country, that one of the elements which we regard as of most value in a republican form of government is that the people should be protected in certain of their rights, even though there may be seen evils to flow from the extreme care with which you guard them.

Now, in this matter of education, while we all desire to see a system accomplished which may be promotive of education in the highest degree; while all intelligent and sensible men at the present day must be led to give their support, their countenance and their aid to educational institutions which will be calculated to improve, to elevate, to refine the character of the people at large—yet you may be carried to a point where the very good you propose to do may be turned into an engine of oppression.

Mr. President, the system, as it seems to me, which is now proposed, is calculated to introduce a class of people which are regarded as among the most odious and detestible in a community. If you undertake to require that all men shall have their children educated, that the Legislature must provide a system by which this shall be done, and that there shall be no longer any option on the part of parents with reference to whether they will send their children to school or not, you must provide police detectives to carry your law into force. And let any gentleman who wishes to see the working of that system go into the quarter sessions of the city of Philadelphia on any Saturday morning when *habeas corpus* cases are being heard and he will see an illustration of it there. There sits an old, respected and venerable gentleman of, I think, some eighty odd years of age, a man who is respected and esteemed as one of the most benevolent, philanthropic, upright and just men that the city of Philadelphia has ever produced. He has devoted himself during a long lifetime and a useful lifetime to objects of benevolence. He has devoted himself for years past to this very thing of gathering vagrant children, or rather to representing the House of Refuge in their efforts to gather up these vagrant children and take them there for the purpose of reform and education. Yet go there on Saturday morning and you will find case after case brought before that

court, and although this home is governed by people who are actuated by the highest and purest motives, and endeavor to do their duty in a christian and benevolent manner, and although this old gentleman, as the advocate of that institution, endeavors to do his duty with honesty, with fairness and with tenderness, yet almost the uniform result of these cases is that the children are set at liberty, and the universal feeling among the audience, among the bar and with the court, is that it is a misplaced and misjudged effort on his part to attempt to hold these children. The sympathies of all the audience seems to be with the parents and the poor, neglected children, and although they may feel that it is hard that these children are not redeemed, as they think they ought to be, there is that sympathy with the parent which is stronger than any other feeling, and I believe that it is a sentiment which will prevail if you attempt to enforce this system, and instead of having it on the small scale that you have it there, you will have it throughout the State, and this system will be almost universally condemned.

Mr. President, men rebel against restraint. This system of public education is one which will meet with favor, is one which will be nurtured, is one which will be cherished, is one which will produce results of the most beneficial character if it is promoted in a proper manner; but the moment you begin to adopt a compulsory system of this character, I believe you will make it odious.

You are putting this into the Constitution. Recollect that you are putting many other things into this Constitution which are calculated to array against it large classes of the community. You are trenching upon interests which are of importance, which have their advocates and their friends, interests which have their power throughout the State of Pennsylvania. You are endeavoring to protect the people against those who may be engaged in corrupt legislation. Recollect that the power of those men is very great. You are endeavoring to curtail corporations within bounds which you believe to be conducing to the interests of the State. Recollect that the corporations of the State of Pennsylvania are powerful in themselves and you may array enemies against this Constitution that may be too powerful for you. Add one and another and

another of these elements, and your Constitution will be broken down by the weights you have put upon it.

Now, Mr. President, I submit that it is proper to leave this question of education with the Legislature. I do not believe that this State of Pennsylvania is in so heathenish and benighted a condition as might be inferred from some of the remarks which have dropped from the gentlemen here. I do not believe it will be found that the city of Philadelphia is in such a sad and horrid condition when you contrast or compare it with other cities of a similar character in the world. To-day I believe that the people of Philadelphia, as a city, are better housed, better fed, better cared for, have more of the family comforts and quite as much of intelligence, integrity and purity as you will find in any other city of a similar character on the face of the globe. I do not believe you will find anywhere else a larger number of comfortable dwellings for the same number of people. You have benevolent institutions of every character, you have public schools flourishing in every part of the State and every child can be educated throughout the city of Philadelphia. Leave something to the people; leave something to the benevolent; something to the stimulus which is given by the inducements that are offered for education and the benefits which are to arise from it; and I hope that you will not, by the adoption of this proposed feature, introduce into the system of government for the State of Pennsylvania, that which, as I said before, you have condemned and endeavored to guard against in almost every other part of your Constitution.

Mr. STANTON. Mr. President: I have received this morning, through Hon. George L. Harrison, statistics in a foreign paper from Miss Mary Carpenter, the celebrated English philanthropist, which I desire read.

The CLERK read as follows:

"SCHOOLS FOR THE NEGLECTED CHILDREN OF THE STREET.

"The following memorial has been addressed to the Lords of the Committee of Council on Education:

"The humble memorial of the undersigned, Managers of the Day Industrial School, Bristol,

"Sheweth, That this school, then called the Bristol Ragged School, was founded more than a quarter of a century ago for

the education of neglected and destitute children, not admissible by reason of their condition into ordinary day schools.

"That the managers always aimed, to the best of their power, to bring the school under the regulation of the Committee of Council on Education, so as to obtain a fair share of the educational grant.

"That experience proved that in many respects this was impossible, on account of the condition of the children; and that in proportion as a higher educational standard was attained, the miserable arabs of the city ceased to attend, their places being supplied by a better class of children.

"That it was found that casual attendance at a purely educational day school produced no appreciable results on the wild and uncared for children, who might be occasionally induced to attend the school.

"That the efforts of the school board in Bristol failed to affect this portion of the population, and that your memorialists have learnt that this is found to be the case in other large cities.

"That in order to reach these children, your memorialists at the commencement of last year, re-organized the school; excluded all the children who appeared able to attend a British or national school, and detained the other children the whole day from eight to six, giving them three very simple meals, and occupying them during part of the day with industrial work.

"That those very destitute and neglected wild children have attended the school regularly, under these circumstances, and that their orderly and civilized demeanor elicited the commendation of her Majesty's Inspector of Schools on a recent visit, though their educational condition was not such as to entitle them to a pecuniary grant.

"That the Bristol School Board has shown its appreciation of the importance of such a school, by accepting the transfer of it, thus undertaking all the expenditure connected with it as an elementary school, and leaving the expense of the feeding to be borne by your memorialists.

"That sufficient supplies for the food of these children, which is a necessary part of the system, will be raised with great difficulty by voluntary contributions, especially as an educational rate is now levied on the city.

"That, in a number of cases, the children who attend the school have parish

relief, and that it is not right that this should be given to the parents while the child is receiving food as charity, yet the guardians of the poor cannot as the law now stands transfer the allowance to the school.

"That in many other cases the parents are dissolute and squander the money which should feed their children, and yet there is no means of making them pay the cost of the food.

"That great public expense is caused by the practice of sending children to certified industrial schools at a cost of about \$20 a head per annum, while, if the needful alteration in the law were made, most of these children could be brought under proper discipline without breaking the parental tie or superceding the parental obligation, at a cost of one-fourth or even one-fifth of that amount.

"Your memorialists therefore pray that in order to enable the existing evil to be properly grappled with, and at the same time to throw the burden of maintenance in the right quarter, additions may be made to the existing act, investing school boards with the following powers:

"1. Power to school boards to establish and maintain such day industrial (feeding) schools, the expense for food not exceeding 1s 6d per week for each child, or to certify as fit and proper such schools established by voluntary effort and to make the necessary allowances to the managers.

"2. Power to send compulsorily to such day industrial schools all children who cannot, or will not, attend the ordinary elementary schools.

"3. Power to recover from parents the whole or part of the money so spent in food, and from the guardians of the poor the whole of the expense of food and education if the child is chargeable.

"These schools could be established and maintained at a very much less expense to the country than certified industrial schools, which the present act allows school boards to establish, and would extend the benefit of a suitable education and training to the very lowest in the country, from whence workhouses and reformatories are constantly recruited at a great loss to the nation.

"Your memorialists respectfully hope, therefore, that you will give the matter your kind consideration.

"Signed by the managers."

Mr. STANTON. In the same connection I desire to have read a letter from E. E.

Wines to Mr. Harrison, which he has kindly furnished me.

The CLERK read as follows:

NATIONAL PRISON ASSOCIATION }
OF THE UNITED STATES, }
NEW YORK, June 23, 1873. }

George L. Harrison, Esq.,

DEAR SIR: On my recent visit to Philadelphia I heard from you, with deep regret, that the Constitutional Convention, now in session in that city, had passed to a third reading an article forbidding any and all appropriations of money to institutions of whatever kind and for whatever purpose other than those founded by the State. Such an article, if adopted and made a part of the Constitution of the State, will be an insuperable bar to the creation in your State of what I conceive to be the most statesmanlike, the most effective, and therefore the wisest system to save children from becoming criminals, and to reform them when they have. The system to which I refer is, in brief, the following: The State to pass a general law authorizing private citizens, whenever and wherever, in their judgment, they might be necessary in their several localities, to found industrial and reformatory schools; such establishments, when ready for occupancy, to be examined and certified by the State, through duly authorized agents, as places suitable for the purposes intended, the State thereupon to guaranty a given sum per week to be paid to each of the said establishments for every inmate cared for by it; the State, as a matter of course, exercising the right of stated inspections, to see that the money it grants is not squandered or misapplied, and reserving the power of revoking its certificate and withholding its appropriation whenever it judges that there is occasion so to do. The first class of institutions named—the industrial school—designed for destitute, exposed or viciously trained children, is of a strictly preventive character; the second—the reform school—designed for children already fallen, is of the curative type, and together they cover the whole field of delinquent juvenile treatment. It is easy to see, (for it lies upon the surface,) what a stimulus such an act as I have referred to would be to private enterprise, and how it would dot a State all over with preventive and reformatory institutions, larger or smaller, according to the locality in which they might be situated.

Nor is this an untried or mere theoretical system. It has existed and been in active operation in England for more than twenty years, with results the most marked and auspicious. In some localities it has cut up juvenile vagrancy by the roots, and almost destroyed juvenile crime; and everywhere it has changed the character of youthful crime, bringing it down to a far milder and less virulent type. The number of such institutions in England, Scotland, and Ireland is, I think, something like three hundred—equal to some fifty or sixty in Pennsylvania. To a general reform throughout the country in the direction of this system, the efforts of the National Prison Association will be earnestly directed; and an article in the amended Constitution of Pennsylvania such as that mentioned by you would be of very evil influence. I can but hope that if the article is adopted, it will be with an amendment declaring that such industrial and reformatory schools as I have described, founded and managed by private citizens, but recognized and certified by the State, shall be deemed State institutions within the meaning of the Constitution, or some other amendment similar in effect. There can be no doubt that the prevention of crime is cheaper and every way better than its punishment; and this is the way to do it.

Yours truly, E. C. WINES.

Mr. LAWRENCE. I hope we shall now have the vote on this question.

Mr. BAER. I rise to ask whether the motion for reconsideration is now in order? I made a motion for the reconsideration of the amendment striking out "may" and inserting "shall."

The PRESIDENT *pro tem*. The motion has been made and seconded.

Mr. LILLY. Will not the question be on that reconsideration first?

The PRESIDENT *pro tem*. The question now pending is on the amendment proposed by the gentleman from York (Mr. Gibson) to the amendment of the gentleman from Chester (Mr. Darlington.)

Mr. RUNK. Mr. President: I have as yet taken up but little of the time of this Convention, and I had not anticipated now occupying any portion of its time, but I feel as though the main question now pending before this Convention should not pass without at least a word from myself upon the subject.

I care but little whether the motion of the gentleman from Somerset to reconsider, be adopted or not. In the standing committee from which this proposition originally emanated, I was rather disposed to favor it upon the ground of expediency than upon the ground of necessity. I shall favor its adoption now. I voted for it when the question was submitted to this Convention. I voted for the adoption of the amendment of the gentleman from the city (Mr. Knight.) But, sir, whether the motion to reconsider shall be adopted or not, is perhaps a matter of small importance to this Convention and to this State. While I favored the amendment upon the ground of expediency, for the purpose of introducing into this Constitution a provision that the Legislature shall have the power to enact a compulsory education law, I feel as though the first section of this article were sufficient in itself to confer upon the Legislature the power to establish a compulsory system of education.

But, sir, I do not agree with the gentleman from the city who last spoke upon this subject, (Mr. Bullitt,) that the proposition now before this Convention does establish a general compulsory system of education. If I believed that it did establish a compulsory system, and if that were its sole object, I should not vote for its adoption here. But it is because I am willing to incorporate into the Constitution which shall go before the people the power to provide a system of compulsory education that I shall vote against this motion to reconsider. I voted for that amendment, not upon the ground of expediency, but upon the ground of right, because I believed it right and just that the Legislature of this Commonwealth should incorporate into its action a compulsory system of education. I was willing that the report of the committee should contain the word "may" instead of the word "shall," because I believed that the members of this Convention and the people of this State would incline to adopt a Constitution in which the power should be vested in the Legislature to provide a system of this character, rather than that they should be compelled to do so. I voted for the amendment of the gentleman from this city, (Mr. Knight,) to incorporate the word "shall" because I believed that was right. I shall vote against the proposition of the gentleman from Somerset (Mr. Baer) to reconsider, because I believe it is right that the

members of this Convention should compel the Legislature to pass a compulsory system of education to the extent provided for in the amendment of the gentleman from Chester (Mr. Darlington.) If, however, I belieged with the gentleman from the city, who has just taken his seat, (Mr. Bullitt,) that the amendment of the chairman of the Committee on Education did provide a system of compulsory education in all cases, I should vote against it. It is because I think the amendment of the chairman of the Committee on Education does not embrace that broad sphere that I shall support it, and shall vote against the motion of the gentleman from Somerset to reconsider.

We have in the first section of this article progressed as I think beyond the Constitution of any State in this Union, and beyond the provision of any State or nation upon the face of this broad globe. We have provided in the first section of this article that the Legislature shall provide and maintain a thorough system of instruction, whereby all the children of this Commonwealth above the age of six years shall be educated.

Mr. NILES. "May."

Mr. RUNK. Well, "may be educated." I care not whether it is "may be educated," or "shall be." It affords the opportunity, and there is where the virtue lies. For that I have zealously contended here before, and for that I contend here to-day.

It is said by gentlemen upon this floor that that is broad enough to cover the proposition now before the Convention. I care not whether it be or not. There is a possibility that there may be a doubt whether the Legislature of the Commonwealth under the provisions of that section would have the power to compel the attendance of the class of people which have been so ably and so eloquently described by the young and earnest delegate from Cumberland (Mr. Wherry.) The first section is that the Legislature *may* provide and maintain schools for general education. As the gentleman from Cumberland argues, it should be "*shall* provide and maintain." I contend that the proposition of the chairman of the Committee on Education does not cover the class of people that is intended to be embraced in the first section of this article. There is, as we are told by the gentleman from Cumberland, as we are told by the president of the board of public education of the city of Philadelphia,

(Mr. Stanton,) who is a delegate on this floor, and the statement has neither been denied, nor can it be denied, a class that number in this city more than twenty thousand children between the school ages who cannot read and write and who are not provided for by the present system of public education. There are within this broad Commonwealth more than seventy-five thousand children that are not educated, as they should be, under the training protection and guidance of the laws of the Commonwealth. Shall this Convention not place within the power of the Legislature the authority to provide not only that these children *may*, but that they *shall* be educated? Why is it not so now? Why is it not the right of the citizen of this Commonwealth, though he dwell in the humblest hamlet in the State, to have his Legislature provide for him that his children growing up between the ages of six and twenty-one shall be educated? Civilization and christianity give no answer why this should not be the duty of the law-making power of our State.

I listened with attention; I listened with interest; I listened with pride to the remarks of the gentleman on my right, (Mr. J. Price Wetherill,) who told us of the provision made by this city for the education and care of her children. We were told of the homes for friendless children: we were pointed to the magnificent structures provided here for the education of the destitute and the homeless. I rejoice in this spirit which Philadelphia shows. I have passed some of these edifices almost daily since the meeting of this Convention in this city, and I never passed one without an exhilaration of pride in my breast at the christian benevolence of this powerful metropolis. I rejoice in the great efforts and the great expenditures of money that Philadelphia has made for the education and for the elevation of her children. But Philadelphia is not alone in this noble work. Let me call the attention of gentlemen to a few facts on this subject.

I have the honor to represent one of the smallest counties in this Commonwealth, and I ask the attention of the gentlemen representing this great, this growing, this magnificent city in which I have so much pride, to the fact that my little county and other counties of our State are not idle in this great mission. In proportion to the number of our inhabitants, our county has actually done more than dou-

ble the amount of labor in this direction toward providing for the education of our children that Philadelphia has. Taking the census of 1870, and the report of the State Superintendent of Public Instruction for 1871—and these are the latest statistics on the subject—I have multiplied the population of my county by twelve in order to get that number as a maximum for comparing the relative efforts of districts in the cause of common education, and when multiplied by twelve, and the population of Philadelphia multiplied by twelve, I find that the proportion of value of school property in my county, compared to the value of the school property of this vast and growing and wealthy city, in which I have so much pride, is as twelve to five and a half. My own little county of Lehigh more than doubles the vast proportions and the vast expenditures of this growing, this grand, this christian city in her provisions for the cause of education. May I not claim, therefore, that this city is far behind in this respect? I do not compare her with the other great and growing cities of our nation; but I compare her with my own little county and find her less than half as effective in her operations for the education of the people. I find also that the county of Allegheny is eight and a half, still less than Lehigh, which is twelve. The county of Dauphin, the capital county of the great Commonwealth, is eight; and there are great counties like Luzerne and Lancaster, which are less than six. Have then this Commonwealth and these great communities of the Commonwealth done their duty in this particular? I might refer to what has been done in other counties, but the time which, under the rules of this Convention, is allotted to each member is entirely inadequate for such a purpose.

Mr. EWING. Go on. We will give you time.

Mr. RUNK. It has been said repeatedly that the Prussian system is, above all others, the best system of education. Possibly it may be for the Prussian government. It is not the best for Pennsylvania. Under the kingdom of Prussia—I do not know how it is under the present empire—that great country was divided into ten territorial districts. The districts were divided and sub-divided until they came down to the parochial schools.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. DARLINGTON. I trust he will have unanimous consent to proceed. I am exceedingly interested in his remarks.

The PRESIDENT *pro tem*. Does the gentleman from Chester make a motion to that effect?

Mr. DARLINGTON. I do.

Mr. EWING. I second it. I want to hear him.

The PRESIDENT *pro tem*. Is there any objection? The Chair hears none. The gentleman from Lehigh will preceed.

Mr. RUNK. I will occupy but a few more moments of the time of the Convention. In the parochial schools the pastor of the parish was the last supervisor; and if gentlemen will take the trouble of examining into the matter, they will find that in no other country on the face of the earth is the same extended and extensive provision made for religious education. I do not claim that in this Commonwealth there should be a provision for religious education incorporated into the Constitution. It is a source of continual pride to me, and it is equally so to every other delegate present, that among all the communities of this great nation, Pennsylvania was first to recognize the fullest religious freedom. Every man here was permitted to enjoy and exercise, under his own vine and fig tree, those religious convictions which his own conscience might dictate. I regret that it has been the pleasure of this Convention to introduce into the Constitution which we are to submit to the people of the State a provision that contravenes this ancient, this well recognized, this inherent principle of ours, that every man may be free to worship God according to the dictates of his own conscience. It has been said by the gentleman from Philadelphia (Mr. J. Price Wetherill) that if you adopt the fifth section of this article, you will abridge that privilege. When that question was submitted to this Convention and the yeas and nays were called, I was almost the only member as far as I heard, who voted no, in objection to the adoption of the fifth section.

Mr. J. PRICE WETHERILL. Will the gentleman allow me to make an explanation just here. We are not opposed to the fifth section if the State will provide the remedy and take care of the vagrant children herself. But if we do not pass this section and if we do not allow the State to take care of vagrant children, we must have some remedy.

Mr. RUNK. Will you allow me to answer the question by the Yankee mode and ask whether the gentleman from this city voted against that section.

Mr. J. PRICE WETHERILL. I really do not recollect.

Mr. RUNK. I know and am willing to concede that he does not recollect. I voted against it and my voice was the only one heard against it in this Convention by me. There are two other sections in another article of this Constitution against which I voted, and when they first came to my knowledge from the report of the standing committee, I marked them as disgraceful. I have not changed my opinion upon their character now. They prohibited the Legislature of this State from exercising the common and the highest duty of every christian—charity. They prohibited the Legislature from extending the hand of charity to every community, simply because a school, or a community, or an association, or a society might entertain religious opinions. I marked them as disgraceful; I characterize them as such now. I voted against them; and whatever may be the opinion of this Convention or of the people of this State, I shall never entertain any other thought than that they are disgraceful to the institutions of Pennsylvania and to the highest dictates of humanity and christian duty.

I recognize, Mr. President, as the highest rule of conduct that which is specified in the Scripture: "Whatsoever ye would that men should do unto you, do ye even so unto them. Whatever transgresses that maxim, transgresses the highest duty of civil government. It transgresses, and surpasses, and tramples upon the highest rights of conscience. I am not here to maintain the views of any particular sect. I maintain with the gentleman from Delaware (Mr. Broomall) that the religious sentiment of the people should be free as the air, and while I maintain that there is one God, I am not willing, and I would vote against introducing into the Constitution of this State "the existence of the being of a God!"

Mr. President, to come down practically to the question before this Convention, it is this: If we can believe the report of the controllers of the public schools of this city, there are within the limits of Philadelphia alone more than twenty thousand children who do not have the benefits that arise from the public schools of the State of Pennsylvania. I would

reach that, not, sir, in the manner proposed by the gentleman from York, (Mr. Gibson,) by establishing schools in which the people of the State of Pennsylvania may be educated in the mechanical arts or in the industrial pursuits, for while I have the highest regard for them, while I desire to see, and I believe it is within the power of the Legislature under the first section of this article to provide, the most broad and comprehensive system, there may be a doubt whether the Legislature has the power to compel the neglected pauper children of this Commonwealth to attend the public schools.

I believe, Mr. President, that it is the duty of this State not only to provide the means whereby the children of this Commonwealth shall be educated, but I believe if the statistics are true that there should be a compulsory provision by which the children who are now running the streets of Philadelphia, who are now running the streets of other cities in this State and other localities, should be gathered by the State into proper schools and be educated. I say it is not only within the power, but it is the right of the well educated citizen to demand of the State that this should be done.

I am not apprehensive of the dangers which the gentleman on my right from this city (Mr. Campbell) anticipates, that if we adopt a system of this kind we shall interfere with the rights of conscience. If I believed such a result as that would ensue, I should oppose it. I believe in the freest exercise of the rights of conscience, but I believe in the adoption of this plan. It is not new. It may be new to the citizens of this city, it may be new to the citizens of this State, but it is not new in other countries. We have the example of the Hebrew Society in London.

There is an association in London, that of the Hebrew Society. It is a society heartily despised by many partisans and by many christians, and perhaps of which the gentleman who so smilingly looks at me (Mr. Furman) may not approve. I care not whether it be the Hebrew society; I am not a member of that society; I do not know that I have ever been in it; but I know that it is a society having for its object that which I regard as one of the highest elements of christian duty. They provide that every member of that society shall be looked after. There are as members and supervisors of that society gentlemen who would do honor to

this Convention, gentlemen whose duty, whether you regard them as christians or not—

The PRESIDENT *pro tem*. The gentleman's time has expired. ["Go on."] The gentleman cannot proceed the second time unless the House unanimously agree that he shall go on.

Mr. RUNK. I shall not occupy ten minutes.

Mr. CARTER. I object.

Mr. LILLY. I object, and I give notice to the Convention that I shall hereafter object to any one speaking over ten minutes.

The PRESIDENT *pro tem*. The delegate from Lehigh cannot proceed at this time, objection being made. The question before the Convention is the amendment of the delegate from York (Mr. Gibson) to the amendment of the delegate from Chester (Mr. Darlington.)

Mr. D. W. PATTERSON. Mr. President: I shall delay the Convention but a few moments. I am opposed to compulsory education, whether applied to the common schools at large or whether applied to a class of people. I think it is manifest that the common school law to-day would never have had so many friends, never advanced as it did, step by step, to its present universal acceptance if a compulsory condition or clause had been embraced in it by which it would have been made imperative. A compulsory provision in this amendment will make it odious. At the same time I want the Convention to consider what they are making imperative. They have stricken out the word "may;" they make it "shall," and what is it? Why, to cultivate skilled mechanics by the establishment of proper places and buildings to teach the arts and mysteries of useful trades. Not in one place, not in two, but to avoid an invidious distinction or partiality they must locate them all over the Commonwealth. The Legislature *must* do this without regard to cost. They must teach all the trades. The State in her capacity must become a carpenter, a cabinet maker, carriage maker and a blacksmith.

The PRESIDENT *pro tem*. The delegate will suspend until the House resumes order.

Mr. LAWRENCE. Let us have a vote.

Mr. D. W. PATTERSON. I will not delay the Convention five minutes. I say the State would become in her State capacity a mechanic of all kinds, and she

then would throw her products upon the State in competition with private enterprise and private industry and labor. That is to be considered. It is a question involving the great question of capital and labor, and I maintain that there is now enough of the products of convict labor, and too much of it, coming in conflict with the labor and industry of the honest artisans and mechanics of this Commonwealth. But this would double that amount, and therefore it is manifestly improper and unfair to honest citizens of the Commonwealth. It is besides utterly impracticable—the provisions of this amendment.

If you require uniformity and to avoid partiality carry out this law, which is made imperative, it will require a greater appropriation annually than the present common school system. It will render both unpopular, because of its being so expensive and onerous, and I want this Convention to reflect and consider whether they are prepared to make it imperative on the Legislature to go into this wholesale matter and thus render both systems—the great common school system—unpopular as well as render this branch of it odious to all. Leave this matter to the Legislature. Leave it to the wisdom, experience and humanity of the Legislature, and then if it is a necessity they will begin gradually, according to the means which they have, and according as the people will support them in this direction, but do not make it imperative by the fundamental law. If you do you render it entirely impracticable to carry out your imperative demands. I hope that nothing of this kind will be adopted by this Convention.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York to the amendment of the delegate from Chester.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Chester.

Mr. BAER. I now renew my motion to reconsider the vote by which "may" was stricken out and "shall" inserted.

Mr. H. G. SMITH. I second the motion. I voted with the majority.

Mr. RUNK. Is that motion debatable? The PRESIDENT *pro tem*. It is not debatable.

On the question of reconsidering the vote, the yeas and nays were required by

Mr. Baer and Mr. Campbell, and were as follow, viz:

Y E A S .

Messrs. Achenbach, Alricks, Baer, Baily, (Perry,) Bardsley, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Corbett, Cronmiller, Dallas, De France, Dunning, Ellis, Ewing, Gibson, Gilpin, Green, Guthrie, Hall, Hanna, Hay, Heverin, Kaine, Lawrence, Lilly, M'Camant, M'Clean, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Furman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Smith, H. G., Smith, Henry W., Struthers, Turrell, Walker, White, J. W. F. and Worrell—64.

N A Y S .

Messrs. Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Black, J. S., Bowman, Church, Corson, Curtin, Cuyler, Darlington, Davis, Edwards, Elliott, Fell, Finney, Funck, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Littleton, Long, MacConnell, M'Murray, Mann, Runk, Russell, Stanton, Wetherill, J. M., Wetherill, Jno. Price, Wherry, and Wright—35.

So the motion to reconsider was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Baker, Bannan, Bartholomew, Brown, Collins, Craig, Curry, Dodd, Fulton, Harvey, Hazzard, Landis, Lear, MacVeagh, M'Culloch, Mantor, Metzger, Mitchell, Newlin, Porter, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N. White, Harry, Woodward and Meredith, President—34.

The PRESIDENT *pro tem*. The question now recurs on striking out the word "may," and inserting "shall," in the original amendment, which will be read.

The CLERK read as follows:

"The Legislature may establish industrial schools and require the attendance of vagrant, neglected and abandoned children.

Mr. RUNK. Mr. President: When interrupted before, I had almost completed what I designed saying on the important question now before this Convention, and I desire in the brief remarks I shall now make the attention of the delegates, whether they concur with me or not. I

do not wish to speak even without the attention of the delegate from Carbon, (Mr. Lilly,) who I know objects to everything that does not concur with his own views. I do not desire now to occupy the time of this Convention without the attention even of the gentleman from Carbon.

Mr. LILLY. I will leave then, Mr. President, because I do not want to hear him. [Laughter.]

Mr. RUNK. I do not ask him to listen to me. I know he is a gentleman who has his own views upon every subject that comes before this Convention.

The PRESIDENT *pro tem*. Personal discussions are out of order. The delegate will confine himself to the matter before the Convention.

Mr. RUNK. I had said to the Convention that I believe it was a matter of little importance whether the amendment of the delegate from the city on my right (Mr. Knight) prevailed or not. I was satisfied that the eloquent remarks of the gentleman from Cumberland (Mr. Wherry) would awaken in the minds of the members of this Convention and in the minds of the people of this State such an attention to the great and crying evil which the amendment of the delegate from Chester is designed to amend, that, whatever might be the result of the motion to reconsider and the action of this Convention upon that question, it would yet tend to remove the great and enormous evil that is now oppressing the citizens of this great Commonwealth. That there is a large number of children between the ages of six and twenty-one who are not now provided for under the present general laws of education, there can be no doubt. That there are more than twenty thousand children unprovided for in the city of Philadelphia, as appears by the report of the Board of Education, is clear. We have been told that there is a report of a committee confirming the fact that there are within the city of Philadelphia more than twenty thousand children between the ages of six and twenty-one not now provided with the means of a sufficient education. There seems to be no doubt whatever on that point. There is a very large number of children in each county of the Commonwealth in the same condition. I have heard gentlemen of this Convention say that within their own counties there are none such. I deny that that is true. I have stated that my own county has provided for the education of its children two to one beyond the provision

of this great city of Philadelphia; and yet I have reason to believe that there are within my own county and within every county of this Commonwealth children between the ages of six and twenty-one who are not included within the educational privileges of the common school law of this State.

Possibly that may be owing to the fault of the parents of the children. If it is owing to the fault of the parents of the children, if the privileges are provided and the parents do not avail themselves of these privileges, they are neglecting a duty that is incumbent upon them as parents and good citizens of this Commonwealth. I hold that it is the duty of the State, I hold that it is the duty of every parent within the State, to provide for the highest culture of his children which his circumstances and ability, and the means the State has provided, afford. I care not whether it goes beyond reading, writing and arithmetic; it is the duty of the parent, it is the duty of the citizen, not only to afford, but to compel the attendance of his children to acquire those attainments.

There may be gentlemen in this Convention who think it is derogatory to the freedom that prevails in the State of Pennsylvania, and throughout this Union, to confer upon the authorities of the State the power of requiring this attendance. I say without fear of successful contradiction that that is not so. If we have a republican form of government, if the perpetuity of this government depends upon the intelligence of the people, then it is the duty of the parent, and if the parent fails to exercise it, it is the duty of the State to require the parent to educate his children to the highest degree that may be necessary for the preservation of our great Commonwealth and of our great nation.

At the conclusion of my remarks upon a previous amendment to this section, I was about to say to the Convention something in regard to what the Hebrew society in London had done in this regard. I was cut short by a gentleman of this Convention who has, perhaps, occupied as much time as any member of it; a gentleman for whose judgment I entertain the highest respect, but whose action in this particular I do not at all commend. I was cut short when I was about to relate that the Hebrew society of London, which no member of this Convention ought to feel himself degraded by coming in con-

tact with, provides for the education of its children at least to as high a degree, and for the protection and elevation of its members as any member of this Convention —

The PRESIDENT *pro tem*. The delegate's time has expired.

MR. CORBETT. I wish to say a word on this section. Although I am a friend of the system of instruction by public or common schools, I cannot vote for this section. I shall not undertake now to discuss the question whether compulsory education is right or wrong, though my own mind inclines to it. I do not undertake the advantages of education to the youth by any means; I feel favorably towards it; and I do not know but that it would be right that parents should be compelled to send their children, for a certain period of time, between certain years, to schools and give them an education. I do not know but that such a provision would be right, the public providing where the parent has not sufficient means.

But there is one thing that is certain, Mr. President. This question of compulsion upon the parent is within the powers of the Legislature. The Legislature has the control of the relation of parent and child. It has ample power over it, and also of the relation of guardian and ward, and husband and wife. Its powers are ample in this respect, and I think it very impolitic for us to mould a policy with reference to merely indigent or abandoned children. In the hands of the Legislature anything it may do can be modified or amended; it will be pliable. It can build up a system with reference to these children which it will be impossible for this Convention to do, and it is no use for us to distrust the discretion of that body in the future. We are not sent here for purposes of legislation; we are not sent here for the purpose even of building up a system of public instruction. That has already been done, and done well, by the Legislature, but as yet it is imperfect. It is in its infancy; but in the hands of the Legislature. I am confident that system will progress until it becomes as nearly perfect as human experience can make it.

After the passage of this first section, have we not done all that we should do in this respect? Clearly without the section, no restriction being put upon the Legislature, they would have this power. That is not doubted. If not restrained by some provision that we incorporate into

the Constitution, if adopted, they would have the power without the section; and if you only want the section as declaratory of the power of the Legislature, you have a sufficient declaration of that power in the first section of the article.

When you come to the consideration of the section now before us, is it necessary? I think not. Is it the intention of this section to provide for a system different from the common school system of the Commonwealth? Is it the intention of this section not to allow this subject to remain in the hands of the local authorities, as the public school system does? Is it the intention to take away from these local authorities the power of control over their schools that they have always exercised, and place it in the hands of the Legislature, and allow them to build up a different system? If that be the intention, and that be done, who is to appoint the teachers? Is it to be done by the State, or by the authorities of the State? Is it to be done by politicians; because, recollect, you must under these industrial school support the whole machinery, and the whole machinery must be within the powers pointed out by the Legislature?

Again, where are these schools to be located? In every county of the Commonwealth, in every school district; or are you to confine them merely to the cities and the populous counties of the Commonwealth? I beg this Convention to pause, because I tell you that when the people of this Commonwealth outside of the populated counties and cities receive this proposition, they will closely scan it and look upon it with suspicion. I beg the delegates to pause. I say that the Legislature has the power to grant all the relief that this section will give, without it. If the Legislature choose to exercise the power, they can do so, and they have this great advantage in all of their action upon the subject, that if they pass an act that operates unwisely, they can remedy it; but our action must be final even though the results be terrible. Look at this matter. Are these industrial schools to be under the control of the Superintendent of Public Instruction? If so, is he to appoint the teachers, or are they to be referred to the local authorities? I ask members to pause and think of what they are doing? I am in favor of taking every child in the Commonwealth and educating him; but I would give him that education without regard to sect or

creed of religion. I have my own religious convictions, but I do not wish to force them upon any other person. As has been well said here, we had better consider whether there are not sections of the State where, without regard to creed, party, or anything else, this will be looked upon with suspicion. If to that be added any sectarian bias, it will carry hundreds and thousands of votes against the Constitution, even the votes of those who are in favor of educational privileges.

Beside all this, I have demonstrated, and I know every lawyer will agree with me in that demonstration, that as far as compulsory education is concerned, the Legislature has power to enforce it without our aid. If they exercise that power, they will do so with discretion; but the moment you incorporate anything in this Constitution that will look like compulsory education, I tell you you will array against your instrument whole creeds, and creeds that are to be respected. They have as much right to their convictions as any of us have to ours; and any action of ours on this delicate subject will not only array these creeds against us, but every minister and clergyman identified with these creeds will be made a worker against the adoption of the Constitution. They do all that is necessary for the education of their own children and they will construe your action with reference to vagrants, abandoned and neglected children, to mean that all their own poor children shall be taken by the strong arm of the State and placed under teachers other than those of their own sect. They claim now, and will claim under any circumstances, that they have the right to educate their own children, not only in the common branches of education, but also in religious instruction, and if it is necessary to the maintenance of that claim that your Constitution shall be defeated, defeated it will be.

This subject of parent and child, of guardian and ward, is safe in the hands of the people. I pray this Convention to do nothing to interfere with it. The Legislature have ample powers in this matter. Let us trust them. They will mould a system that will be flexible in their hands, and it will undoubtedly be more perfect than anything that we can do.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Knight) to the

amendment, to strike out "may" and insert "shall."

On the question of agreeing to the amendment to the amendment, a division was called for, which resulted twenty-one in the affirmative. This being less than a majority of a quorum, the amendment to the amendment was rejected.

Mr. DARLINGTON. Mr. President: I desire to ask unanimous consent to make a verbal correction in the pending amendment offered by me as a new section. The word "therein" was omitted after the word "attendance" by a typographical error. It was in the copy but slipped out when the copy was furnished the Printer. The sentence should read: "The Legislature may establish industrial schools and require the attendance therein of vagrant, neglected and abandoned children."

Unanimous consent was given and the correction made accordingly.

Mr. J. M. WETHERILL. I offer the following amendment to the amendment: I move to strike out all after the word "Legislature" and insert: "May provide for the establishment and support of schools for free instruction in agriculture, mining, and the mechanical arts and sciences."

It seems to me that the amendment which the gentleman from Chester, the chairman of the Committee on Education, has offered, would, if adopted, embody in the Constitution a distinction that I should regret very much to see placed in that instrument. It provides for the education of vagrant, abandoned and neglected children in the industrial arts and sciences. It seems to me that that principle is one that we should not recognize. The children of the State might be instructed only in whatever means of education may be provided by the Constitution and laws, and the children who are neglected, abandoned and vagrant should be instructed only in the arts which pertain to industrial pursuits. For my part, I will consent to no such distinction. I consider instruction in the industrial arts and sciences, in those particularly of agriculture, manufacturing and mining, as among the most noble branches of instruction which can be offered to the youth of this State, or any other; and it is for the purpose of avoiding that distinction that I have offered my amendment, namely: That the Legislature may establish schools for the free instruction of all the people of this community in the industrial arts, in agriculture, manufacture, mining and me-

chanics. If I had the power, I would apply this broad instruction to all the people of the country who might avail themselves of the advantages which this system could offer for that purpose.

However, I do not feel disposed in the present temper of this Convention to advocate my views upon the subject any further. I hope that the Convention will take the subject into consideration, and will see the importance of avoiding a distinction which is, at least to me, so apparently invidious to a certain class of the children of this State, who by no fault of theirs, but by the misfortune or the accident of birth, are placed in a position to be vagrant and abandoned. I should be sorry to see a provision embodied in the Constitution in the language of the gentleman from Chester, to which my proposition is an amendment.

Mr. BUCKALEW. This section as now presented, I read in this fashion: "The Legislature may do what they can do on the subject of establishing particular forms of schools." I am not in favor of putting into the Constitution such a nugatory, useless, surplus provision as this. The Legislature already can establish industrial schools or any other form of schools they please under their general powers; and as the section is now amended, we are simply saying to them that they may do what they already can do. I submit that this is not a fit section, in this form, to be placed in the Constitution of the State; and as the Convention has already passed the question of establishing a rule for the Legislature, or rather rejected a provision for compulsory education, I hope they will reject this.

Mr. BROOMALL. I move to recommit this article to the Committee on Education with instructions to report forthwith the first and fourth sections alone.

I desire only to say that this is a ready mode, as the Convention will see, of getting by a single vote these two sections before this body, when if anybody chooses debate can be closed, and we can vote at once. The subject which is open before us is endless, and it looks to me as if by the time we have all told all that we know upon it, 1873 will come upon us.

On the question of agreeing to the motion a division was called for, which resulted forty-six in the affirmative. Before the negative was taken,

Mr. STANTON said: Mr. President, I would have no objection to vote for this

recommittal, if gentlemen would promise to make no more speeches when the Committee on Education again reports. Otherwise I would prefer to sit the subject out now.

Mr. WHERRY. I call for the yeas and nays and desire to debate the motion to recommit.

Mr. CORBETT. It is not debatable.

Mr. D. W. PATTERSON. I second the call.

The PRESIDENT *pro tem*. The Clerk will proceed with the call.

Mr. WHERRY. I desire to debate this question.

Mr. BOYD. It cannot be debated.

Mr. WHERRY. Is it not debatable?

Mr. BOYD. Not after the yeas and nays are called and ordered.

The PRESIDENT *pro tem*. The yeas and nays have been called for, and the Clerk will proceed with the call.

The yeas and nays which had been required by Mr. Wherry and Mr. D. W. Patterson were as follow:

YEAS.

Messrs. Alricks, Andrews, Baer, Bannan, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Campbell, Carey, Cassidy, Clark, Corbett, Corson, Cronmiller, Curry, De France, Dodd, Dunning, Ellis, Ewing, Funck, Gibson, Gilpin, Green, Guthrie, Hay, Hazzard, Heverin, Horton, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, M'Camant, M'Clean, M'Culloch, Mott, Niles, Palmer, G. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Smith, H. G., Stanton, Walker, White, J. W. F. and Wright—58.

NAYS.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Beebe, Bowman, Calvin, Carter, Church, Cochran, Curtin, Dallas, Darlington, Davis, Edwards, Elliott, Fell, Finney, Hall, Hanna, Littleton, Long, MacConnell, M'Murray, Mann, Mantor, Minor, Palmer, H. W., Parsons, Patterson, D. W., Read, John R., Reynolds, Runk, Russell, Smith, Henry W., Turrell, Wetherill, J. M., Wherry and Worrell—40.

So the motion to recommit was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Brown, Collins, Craig, Cuyler, Fulton, Harvey, Hemphill, Howard, Knight, Landis,

Lear, MacVeagh, Metzger, Mitchell, Newlin, Porter, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Struthers, Temple, Van Reed, Wetherill, J. Price, White, David N., White, Harry, Woodward and Meredith, *President*—35.

Mr. BROOMALL. Mr. President: As I understand the practice, the article is now before the Convention (because the instructions dispense with the form) with the first and fourth sections alone in it; and as such is to be acted upon as if reported from the committee of the whole. Am I right in that?

The PRESIDENT *pro tem*. The vote was to refer to the committee. The committee has not reported.

Mr. BROOMALL. But they were instructed to report forthwith, dispensing with the form.

The PRESIDENT *pro tem*. That is correct; but the Chair would rather take the views of the House than decide the question himself.

Mr. BROOMALL. I only wish to know what the practice is.

The PRESIDENT *pro tem*. I cannot answer the question. I am not aware of any practice on the subject.

Mr. BROOMALL. I suppose the chairman can make a formal report if that is deemed necessary.

The PRESIDENT *pro tem*. The Chair is of the opinion that on the vote the article must go to the Committee on Education, and the committee must report forthwith, as instructed.

Mr. BUCKALEW. Mr. President: The practice in such cases has been that the chairman of the committee *pro forma* makes a report. It is the duty of the gentleman from Chester receiving this article to report it back forthwith.

The PRESIDENT *pro tem*. I suppose that to be the practice.

Mr. DARLINGTON. Mr. President: The Committee on Education, in obedience to the order of the Convention, have instructed me to report the first and fourth sections of the article that they have heretofore reported, according to the order of the House.

The PRESIDENT *pro tem*. The Committee on Education report the article on education with the first and fourth sections, as instructed by the Convention.

Mr. DARLINGTON. I now move to amend by inserting an additional section. Is it necessary that I should move that the Convention proceed to the further consideration of the article. If it is, I

make the motion that the Convention now proceed to consideration of the report of the committee.

The *PRESIDENT pro tem.* It is moved that the Convention now proceed to the consideration of the article just reported.

The motion was agreed to.

The *PRESIDENT pro tem.* The article is before the Convention, and the first section will be read.

Mr. BUCKALEW. I rise to a question of order. It is that the only question before the Convention now is upon accepting the report of the committee, covering both sections; that we do not take this up as if we were starting on second reading, but act on the report of the committee. If any gentleman wants to make a motion to amend, he can move to amend the report.

The *PRESIDENT pro tem.* The Chair entertains that view.

Mr. WHERRY. I move to amend the report.

The *PRESIDENT pro tem.* The question is as stated by the delegate from Columbia. Will the Convention receive or accept the report of the Committee on Education?

The question being put, it was decided in the affirmative.

Mr. WHERRY. I move the following amendment to the report of the committee, as an additional section.

The *PRESIDENT pro tem.* First the section will be read.

The Clerk read as follows:

SECTION 1. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this Commonwealth above the age of six years may be educated.

Mr. WHERRY. I send up an amendment.

Mr. MANN. I move to amend the section by adding:

"And the Legislature shall appropriate at least one million dollars each year for this purpose."

And upon that I call for the yeas and nays.

Mr. WHERRY. I have sent an amendment to the desk.

The *PRESIDENT pro tem.* I recognized the gentleman once before.

Mr. WHERRY. And my amendment was sent to the Clerk's desk.

The *PRESIDENT pro tem.* The first section is under consideration.

Mr. WHERRY. To which I have offered an amendment.

The *PRESIDENT pro tem.* There is an amendment already pending to the first section, the amendment of the gentleman from Potter.

Mr. BROOMALL. Now, Mr. President, I rise to make a privileged motion.

Mr. WHERRY. I rise to a question of privilege. Before the amendment of the gentleman from Potter was offered, I myself had been recognized by the Chair and offered an amendment to that section and the amendment was sent to the Clerk's desk. I therefore insist on my right to have my amendment considered first.

The *PRESIDENT pro tem.* It was not a motion to amend the section.

Mr. WHERRY. It was to add to the section.

The *PRESIDENT pro tem.* To add a new section.

Mr. WHERRY. To add to the section.

The *PRESIDENT pro tem.* The Chair understood it was a new section and the Clerk so understood. The Chair himself did not understand it exactly, because he had it not before him, but the Clerk understood that it was a new section. The Chair therefore recognized the amendment of the delegate from Potter to the section, and so recognizing he will persist in it until the House over-rules him. The question now is on the amendment of the delegate from Potter (Mr. Mann.)

Mr. BROOMALL. Mr. President: I rise to call the previous question upon the report of the committee, and I hope it will be sustained. That will not cut off the amendment of the gentleman from Potter, because that is already in, and I would also be willing to let in the amendment of the gentleman from Cumberland (Mr. Wherry.) What I desire is at some time or other to get to an end of this proceeding.

Mr. WHERRY. Well, we accept that. We do not desire to discuss this question one moment longer. All we ask is simply a vote on our propositions.

Mr. BROOMALL. If that is the case, I withdraw the call for the previous question, if it is understood that the debate is closed.

Mr. WHERRY. I am obliged to the gentleman.

Mr. MANN. I call for the yeas and nays on the amendment which I offered.

Mr. RUSSELL and Mr. BOYD seconded the call.

The question was taken by yeas and nays, with the following result :

YEAS.

Messrs. Alricks, Andrews, Armstrong, Baily, (Perry,) Bannan, Bardsley, Beebe, Brown, Carey, Carter, Cassidy, Church, Clark, Cochran, Curry, Curtin, Davis, Dodd, Dunning, Edwards, Elliott, Fell, Finney, Funck, Hall, Hazzard, Heverin, Horton, Hunsicker, Lamberton, Lilly, Littleton, Long, M'Culloch, M'Murray, Mann, Mantor, Niles, Parsons, Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Russell, Smith, Henry W., Stanton, Struthers, Turrell, Van Reed, Wherry, Worrell and Wright—55.

NAYS.

Messrs. Achenbach, Baer, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Broomall, Buckalew, Bullitt, Calvin, Campbell, Corbett, Corson, Cronmiller, Dallas, Darlington, De France, Ewing, Gibson, Green, Guthrie, Hanna, Hay, Howard, Kaine, Lawrence, MacConnell, M'Camant, M'Clean, Mott, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Read, John R., Reed, Andrew, Runk, Walker, Wetherill, J. M., Wetherill, Jno. Price and White, J. W. F.—43.

So the amendment of Mr. Mann was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bartholomew, Brodhead, Collins, Craig, Cuyler, Ellis, Fulton, Gilpin, Harvey, Hemphill, Knight, Landis, Lear, MacVeagh, Metzger, Minor, Mitchell, Newlin, Palmer, G. W., Porter, Ross, Sharpe, Simpson, Smith, H. G. Smith, Wm. H., Stewart, Temple, White, David N., White, Harry, Woodward and Meredith, *President*—35.

Mr. WHERRY. I desire to amend the report of the committee by the introduction of a new section, which is at the Clerk's desk.

The *PRESIDENT pro tem.* It will not be in order at this time. The question now is on the first section as amended.

The section was agreed to.

The *PRESIDENT pro tem.* The fourth section of the article will now be read, being the second section as it now stands.

Mr. WHERRY. I now move to amend the report by the insertion of the following, as a new section to be called section two :

"The Legislature shall establish industrial schools, and require the attendance therein of vagrant, neglected and abandoned children."

I call for the yeas and nays on this amendment.

Mr. BOYD. I second the call.

Mr. TURRELL. I rise to a question of order. The action of the Convention in instructing the committee to report in the manner they have, is practically striking out this amendment which was before them before, and it cannot be inserted again after just leaving it out.

The *PRESIDENT pro tem.* The Chair would like to entertain and sustain the point of order, because he is opposed to the section and thinks it is not proper to be in the Constitution, but he cannot. [Laughter.] The Clerk will call the roll.

The question being taken by yeas and nays resulted, yeas thirty-one, nays sixty-two.

YEAS.

Messrs. Andrews, Bailey, (Huntingdon,) Beebe, Bowman, Carter, Church, Cochran, Corson, Curry, Darlington, Davis, Elliott, Fell, Finney, Funck, Hazzard, Hunsicker, Lamberton, Long, M'Culloch, M'Murray, Mantor, Minor, Palmer, H. W., Parsons, Reynolds, Russell, Stanton, Van Reed, Wetherill, John Price and Wherry—31.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Clark, Corbett, Cronmiller, Dallas, De France, Edwards, Ewing, Gibson, Green, Guthrie, Hall, Hanna, Hay, Hemphill, Horton, Howard, Kaine, Lawrence, Lilly, MacConnell, M'Camant, M'Clean, Mann, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Smith, H. G., Smith, Henry W., Struthers, Turrell, Wetherill, J. M., White, J. W. F. and Worrell—62.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bartholomew, Brodhead, Cassidy, Collins, Craig, Curtin, Cuyler, Dodd, Dunning, Ellis, Fulton, Gilpin, Harvey, Heverin, Knight, Landis, Lear, Littleton, MacVeagh, Metzger, Mitchell,

Newlin, Palmer, G. W., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Walker, White, David N., White, Harry, Woodward, Wright and Meredith, *President*—40.

Mr. DARLINGTON obtained the floor.

The *PRESIDENT pro tem.* The Chair will ask the privilege of stating that in his opinion he made an error in stating the point of order raised by the delegate from Susquehanna, (Mr. Turrell,) that when the Convention decided to recommit with instructions to report the first and fourth sections of the article only, and the committee so reported, that ended the matter.

Mr. H. W. PALMER That would cut off the amendment of the gentleman from Potter (Mr. Mann.)

The *PRESIDENT pro tem.* It has resulted in no mistake with the exception of the amendment offered by the delegate from Potter (Mr. Mann.) That was adopted. If it was not adopted the Chair would certainly correct his error.

Mr. STANTON. Does that prevent any further amendment?

Mr. COCHRAN. Is any amendment in order? I wish to move an amendment.

Mr. DARLINGTON. I believe I have the floor.

The *PRESIDENT pro tem.* The delegate from Chester.

Mr. DARLINGTON. I move to amend by adding a new section.

The *PRESIDENT pro tem.* Is it a section which was offered before.

Mr. DARLINGTON. No, sir; it is new.

The *PRESIDENT pro tem.* The amendment will be read.

The CLERK read as follows:

"The Legislature may by law require that every child of sufficient mental and physical ability shall attend the public schools, unless educated by other means."

Mr. BROOMALL. I rise to a question of order. The question of order is, that the report of the chairman of the committee having been adopted, cuts off all amendment. The only question is on the report of the committee.

Mr. BOYD. Else what was the use of referring it back to the committee, with instructions to report only those two sections?

The *PRESIDENT pro tem.* The Chair does not sustain the point of order. It would cut off all amendments entirely.

Mr. DARLINGTON. Mr. President: I desire to vote distinctly upon this question. ["Question." "Question."] One

moment; I have the floor. I have no desire to detain the Convention five minutes upon this question. I propose to be heard.

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

Mr. DARLINGTON. I object to interference.

The *PRESIDENT pro tem.* The delegate from Philadelphia rises to a question of order.

Mr. CAMPBELL. The delegate from Chester has spoken two or three times on this subject, and also he is not in his seat.

The *PRESIDENT pro tem.* The delegate is not in his seat.

Mr. DARLINGTON. I will go to my seat. I am ready to obey the ill-natured suggestion of any gentleman who wants me to go to my seat.

Mr. President, I propose to ask the serious consideration of this Convention to the amendment which I have presented as a new section. It was agreed to, I may fairly state, by the Committee on Education, and it is entitled to the fair consideration of this House. I want engrafted into the Constitution a provision which shall compel you and me to educate our children. If we are so forgetful of our social duty, so regardless of what we owe to them and to society as to be unmindful of that duty which is incumbent upon us, I want the power committed to the State, and I want the State to exercise it. Whenever I so far forget myself as to leave my child without education, I want the State to compel me to do it, and I want them to compel every gentleman of this Convention to do it and every man in the Commonwealth, who is able, to do it; and I want a vote on that question.

Gentlemen think it is unpopular to compel the people to educate their children. It is somewhat unpopular to take the child out of the street and put him to jail. You take him from his parent then. It is unpopular with a certain class, perhaps, but that must be a class that I have not been living among. Where I have the good fortune to reside, everybody educates. Everybody ought to educate, and everybody ought to be compelled to educate. I do not know that I shall convince anybody, but I want the yeas and nays upon this question; and if any gentleman will allow me to have them, I will stop speaking the moment that purpose is indicated.

Mr. BOYD. I will.

SEVERAL DELEGATES rose.

The PRESIDENT *pro tem.* The yeas and nays are ordered on the amendment of the gentleman from Chester. The Clerk will call the roll.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Andrews, Baily, (Perry,) Beebe, Cassidy, Church, Curry, Curtin, Cuyler, Darlington, Davis, Edwards, Elliott, Fell, Finney, Hazzard, Littleton, M'Murray, Mantor, Palmer, H. W., Patterson, T. H. B., Pughe, Reynolds, Runk, Russell, Stanton, Turrell, Van Reed, Wetherill, John Price and Wright—29.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Cochran, Corbett, Corson, Cronmiller, Dallas, Dodd, Dunning, Ellis, Ewing, Funk, Gibson, Green, Guthrie, Hall, Hanna, Hay, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, Mann, Minor, Mott, Niles, Parsons, Patterson, D. W., Patton, Purman, Purviance, John N., Purviance, Samuel A. Read, John R., Reed, Andrew, Rooke, Smith, H. G., Smith, Henry W., Struthers, Temple, Walker, Wetherill, J. M., White, J. W. F. and Worrell—69.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Brodhead, Carey, Clark, Collins, Craig, De France, Fulton, Gilpin, Harvey, Knight, Landis, Lear, MacVeagh, M'Culloch, Metzger, Mitchell, Newlin, Palmer, G. W., Porter, Ross, Sharpe, Simpson, Smith, William H., Stewart, Wherry, White, David N., White, Harry Woodward and Meredith, *President*—35.

Mr. H. W. PALMER. I offer the following amendment as a new section and desire to say a word on the subject—

The PRESIDENT *pro tem.* Is it a provision that was offered before?

Mr. H. W. PALMER. No, sir.

The PRESIDENT *pro tem.* The amendment will be read.

The CLERK read as follows:

"No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school."

Mr. BAER. I raise a point of order. The same thing is in the article.

Mr. H. W. PALMER. The same section is not included in the article. It is a different section.

The PRESIDENT *pro tem.* It will depend on whether that amendment was before the Convention before.

Mr. BAER. I refer to section three.

Mr. H. W. PALMER. This is not section three. It is a different section, worded differently and applies to a different case. I desire to explain to the Convention the manner in which, intentionally or unintentionally, we have been defrauded.

The PRESIDENT *pro tem.* The Chair thinks the amendment is in order.

Mr. H. W. PALMER. I do not understand that the Convention meant in agreeing to the motion of the gentleman from Delaware to allow the public school fund of this State to be diverted for sectarian purposes. I do not think the Convention intended that; but such was the effect of that motion, and I therefore move this new section. This matter is not covered by the article on legislation, for this reason: The article on legislation applies only to legislative appropriations. The taxes levied in the various school districts of the State by the school boards may be applied to sectarian purposes in spite of the restrictions contained in the legislative article unless this section be passed, and I charge upon the gentleman from Delaware that he dropped this section knowingly and intentionally.

The PRESIDENT *pro tem.* The gentleman will make no charge of a personal character. It is out of order.

Mr. H. W. PALMER. I charge him with desiring that the money raised for the public schools shall be used for sectarian purposes so long, in his words, as such sectarian books as the Holy Bible are allowed to be read in the public schools. For my part I believe the Bible ought to be read in the schools, and do not believe an appropriation of the public money should be made for sectarian purposes; not regarding the Bible as in any sense a sectarian book, and I therefore move this section, hoping and believing it will be adopted by the Convention.

Mr. BROOMALL. Mr. President: As far as I am concerned I had hoped debate on this matter was ended, and most assuredly I shall not reply to the somewhat remarkable charges of the young man who has just taken his seat. The time will come when with his abilities he will

be sufficiently versed in legislative bodies to learn that there is something in the notions of Chesterfield. I have only to say that I shall vote against this section because I think all that is good in that direction has been secured in the article on legislation. I am willing to entrust the Legislature with this subject and the people of each school district with the proper appropriation of their own school moneys, and if, as the gentleman from Philadelphia (Mr. J. Price Wetherill) says, they can get Protestant vagrants educated in the Protestant Home cheaper than they can elsewhere, and Catholic vagrants in the Catholic Home cheaper than they can elsewhere, I am perfectly willing to let them do it if the people of the respective districts are willing to let them do it. That is to say, they may bargain with the Catholic Home to maintain Catholic vagrants and the Protestant Home to educate Protestant vagrants if the people of the respective school district are willing to do so. I am willing to leave that matter with them, and I think they can properly be entrusted with it. The whole subject is rather for the Legislature than for us.

I object, most certainly, to sectarianism in the schools. I do not understand that the young man who last addressed the Convention is in favor of it. He says he is not. If he does not think so now, the time will come, doubtless, when with his abilities he will come to the conclusion that sectarianism in the schools is wrong. I trust that the Convention will see that all that is necessary in that direction has been done in the article on legislation and will vote down this amendment.

Mr. BUCKALEW. Mr. President: It is to be observed that we have dropped the fifth section of this article, which was intended to cover this subject of sectarianism and does most completely. Having done that, I think we ought to retain this third section, because it will be the only provision anywhere in the Constitution which will prevent local appropriations of the school moneys raised by taxation of all the people, for these objects. I did not understand that there was any considerable objection to this third section. I confess I was in error in supposing that the fifth section was still a part of this article. With that dropped, I am in favor of replacing the third section. The fifth section as agreed to in committee of the whole read in this manner:

"Neither the Legislature nor any county, city, borough, school district or other public or municipal corporation shall ever make any appropriation, grant, donation of land, money or property of any kind, to any church or religious society, or to or for the use of any university, college, seminary, academy, school or any literary, scientific or charitable institution or society controlled or managed, either in whole or in part, by any church or sectarian denomination."

You will observe that that was very stringent and sweeping; and there was an argument made here that had some force against so comprehensive a section; but the third, which is substantially the one now before us, although changed to avoid the rule, is that no money raised in any way for the support of the public schools of the Commonwealth shall ever be appropriated for these objects. I think we ought to have that in, and that its retention will be strongly sanctioned by the people.

Mr. WORRELL. I call for the yeas and nays.

Mr. NILES. I desire simply to call attention to the legislative article—

Mr. BUCKALEW. The legislative article applies to State appropriations.

The PRESIDENT *pro tem*. The yeas and nays are called for. Does a sufficient number second the call?

The call for yeas and nays was seconded by ten members rising.

The question was taken by yeas and nays, with the following result:

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Bannan, Bardsley, Bigler, Black, Chas. A., Black, J. S., Bowman, Boyd, Brodhead, Brown, Buckalew, Calvin, Campbell, Carter, Cassidy, Church, Cochran, Corbett, Cronmiller, Curry, Cuyler, Dallas, Darling-ton, Davis, Dodd, Dunning, Edwards, Elliott, Ellis, Ewing, Fell, Finney, Fulton, Guthrie, Hall, Hanna, Hay, Hazzard, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, M'Culloch, M'Murray, Mantor, Minor, Mott, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Runk, Russell, Stanton, Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., Wethe-

rill, John Price, White, J. W. F., Worrell and Wright—85.

N A Y S .

Messrs. Baer, Baily, (Perry,) Biddle, Broomall, Bullitt, Corson, Funck, Mann, Smith, H. G. and Smith, Henry W.—10. So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Barclay, Bartholomew, Beebe, Carey, Clark, Collins, Craig, Curtin, De France, Gibson, Gilpin, Green, Harvey, Knight, Landis, Lear, Littleton, MacVeagh, Metzger, Mitchell, Newlin, Palmer, G. W., Patton, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Wherry, White, David N., White, Harry, Woodward and Meredith, *President*—38.

The *PRESIDENT pro tem.* The hour of one o'clock having arrived, the Convention takes a recess until half-past three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

The *PRESIDENT pro tem.* The Convention will come to order. There is not a quorum of members present.

Mr. WHERRY. I move that the roll be called.

The *PRESIDENT pro tem.* The Clerk will call the roll.

The roll being called, the following delegates answered to their names:

Messrs. Ainey, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Beebe, Biddle, Bigler, Black, Chas. A., Bowman, Boyd, Broomall, Brown, Buckalew, Campbell, Carter, Cochran, Corson, Cronmiller, Darlington, De France, Dodd, Elliott, Ewing, Fulton, Funk, Gibson, Gilpin, Guthrie, Hall, Hanna, Harvey, Hay, Hemp-hill, Horton, Hunsicker, Kaine, Knight, Lamberton, Lilly, Long, MacConnell, M'CLean, M'Culloch, M'Murray, Mann, Mantor, Minor, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T., H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Runk, Russell, Smith, Henry W., Struthers, Turrell, Wetherill, J. M., Wetherill, J. Price, Wherry, White, Harry, White, J. W. F., Worrell and Wright—74.

The *PRESIDENT pro tem.* There is a quorum present.

PLACE OF SUMMER SITTING.

The *PRESIDENT pro tem.* announced that he had appointed the following gentlemen as the committee authorized to be raised this morning to select a suitable place for the summer sittings of the Convention should it agree to adjourn to any other place than Philadelphia: Messrs. Brodhead, H. W. Palmer, M'CLean, Russell and Howard.

EDUCATION.

The *PRESIDENT pro tem.* The article on education is now before the Convention, and the question is on the fourth section of the original article, the third section of the article as amended, which will be read.

The *CLERK* read as follows:

SECTION 4. A Superintendent of Public Instruction shall be appointed by the Governor by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

The section was agreed to.

Mr. COCHRAN. Mr. President: I offer the following, to come in as a new section:

"There shall be no distinction made in regard to sex in the compensation of teachers in the public schools."

Mr. President, I feel constrained to offer this amendment by what I believe to be a principle of justice. I think it will be agreed on all hands that the sex which is disfranchised so far as the right of voting is concerned is the best educator of the young. It is on it that we are to rely to bring up the young of this country in such way as to make them good citizens and profitable to the Commonwealth. Why, then, should this distinction which has so long prevailed in regard to wages between male and female teachers be longer continued. The section which I propose contains a practical principle, and a rule which would have the effect, if adopted, of doing what is simple and impartial justice. The services of the female teachers are as valuable, their work is as worthy, their qualifications and aptitudes are in some respects better for the great duty of teaching than those of the other sex. And yet they have no power, and no representative to defend them. You do not allow them to vote. You do not allow them even to take any part in the selection of the teachers of your public

schools. You have given them in this Convention the poor boon of allowing them to be elected to take part in the management of the public schools, provided the greater and the nobler sex will condescend to give their suffrages to one of them for such a position.

That is the relation in which you so far have proposed to stand towards those whom you profess to reverence and almost worship as the best class of humanity. And shall it be said that we are willing to go on and continue this course of injustice towards them; that we are willing to take their services and pay for them just what we choose to give, and that we shall take advantage of their necessities and compel them to serve in this capacity, without having any control themselves in any manner in the fixing of their compensation?

What reason is there that any distinction should be made between the sexes in this regard? I say that as teachers they are better qualified in many respects for the purpose than men are, and that the schools which are taught by them are productive of greater and better results in very many cases than those which are taught by men. They govern by affection—they obtain the respect and the love of their pupils, and they are enabled in that way to be more useful and efficient as teachers than we can be however much we may endeavor to become so, whether it be in your Sunday schools or in your public schools established by the Commonwealth.

I hope that there will be some sense of chivalry manifested by this Convention in a question of this kind, and that when those who are without defenders or who are unable to defend themselves come here, or are brought here, to ask for a meed of justice that there will be found a majority of this Convention who are ready to render them this simple act of equity and fairness.

Mr. RUNK. Before the gentleman sits down I want to ask him a single question, with his permission.

Mr. COCHRAN. Certainly.

Mr. RUNK. What would the gentleman fix as the standard of compensation for the male teachers?

Mr. COCHRAN. I fix no standard. I simply propose that the standard shall be equal and just to both.

Mr. RUNK. One more question. In some of the counties of this State the salaries of male teachers average about forty-

eight cents per month for each scholar, which amounts to about \$28; in others it is upwards of \$40, and in cities it is probably higher. What should be the standard in the estimation of the gentleman?

Mr. WHERRY. I will state that in my district the average standard of compensation for female teachers is higher than that for males.

The PRESIDENT *pro tem*. The question is upon agreeing to the new section.

Mr. COCHRAN. On that I call for the yeas and nays.

Mr. WHERRY. I second the call.

The CLERK proceeded to read the roll.

Mr. BEEBE. [When his name was called]—I vote "nay," because the clause offered has no respect to qualifications.

The CLERK resumed and continued the call of of the roll, with the following result:

Y E A S .

Messrs. Ainey, Andrews, Black, Charles A., Boyd, Broomall, Campbell, Cochran, Corson, Darlington, De France, Fell, Fulton, Gibson, Guthrie, Horton, Knight, MacConnell, M'Murray, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, Samuel A., Russell, Smith, Henry W., Temple, Turrell, Wetherill, J. M. and Wright—30.

N A Y S .

Messrs. Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Beebe, Biddle, Bigler, Bowman, Buckalew, Carter, Church, Cronmiller, Dallas, Dodd, Elliott, Ewing, Gilpin, Hall, Hanna, Harvey, Hemphill, Hunsicker, Kaine, Lamberton, Lilly, M'Camant, M'Clean, Mann, Mantor, Minor, Niles, Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Reed, Andrew, Runk, Smith, H. G., Struthers, Walker, Wetherill, Jno. Price, Wherry, White, Harry and Worrell—48.

So the amendment was rejected.

ABSENT—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Black, J. S., Brodhead, Brown, Bullitt, Calvin, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Edwards, Ellis, Finney, Funck, Green, Hay, Hazzard, Heverin, Howard, Landis, Lawrence, Lear, Littleton, Long, MacVeagh, M'Culloch, Metzger, Mitchell, Newlin, Pughe, Read, John R., Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Van Reed, White, David N., White, J. W. F., Woodward and Meredith, *President*—55.

Mr. J. M. WETHERILL. I offer the following amendment as a new section :

"The Legislature shall provide for the establishment and support of schools for free instruction in agriculture, mining and the mechanic arts and sciences."

The PRESIDENT *pro tem.* Was not that amendment offered before?

Mr. J. M. WETHERILL. I have altered the phraseology a little to come within the rule. It is in substance the same, but the phraseology has been altered.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Schuylkill (Mr. J. M. Wetherill.)

Mr. J. M. WETHERILL. On that question I call for the yeas and nays.

Mr. COCHRAN. I second the call.

Mr. RUNK. I desire to state now if it is in order the reason for my vote upon this question. I think the power proposed to be conferred by this section is conferred by the first section of the article.

The question being taken by yeas and nays, resulted: Yeas eleven; nays seventy-six, as follow:

Y E A S .

Messrs. Andrews, Corson, Fell, Gibson, Knight, M'Camant, M'Murray, Parsons, Van Reed, Wetherill, J. M. and Wright—11.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Buckalew, Calvin, Campbell, Carter, Church, Cochran, Cronmiller, Dallas, Darlington, De France, Dodd, Elliott, Ellis, Ewing, Fulton, Funck, Gilpin, Green, Guthrie, Hall, Hanna, Harvey, Hay, Hemphill, Horton, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Runk, Russell, Smith, H. G., Smith, Henry W., Struthers, Temple, Turrell, Walker, Wherry, White, Harry, White, J. W. F. and Worrell—76.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Brown, Bullitt, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Ed-

wards, Finney, Hazzard, Heverin, Howard, Landis, Lear, Littleton, Long, MacVeagh, Metzger, Mitchell, Newlin, Pughe, Read, John R., Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Wetherill, Jno. Price, White, David N., Woodward and Meredith, *President*—46.

Mr. C. A. BLACK. I offer the following amendment, to come in as an additional section :

"No teacher, State, county, township or district school officer shall be interested in the sale, proceeds or profits of any books, apparatus or furniture used or to be used in any school in this State with which such teacher or officer may be connected, under penalties to be prescribed by the Legislature."

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Greene (Mr. Charles A. Black.)

The amendment was rejected.

Mr. RUSSELL. I offer the following new section as an amendment.

"The arts and sciences shall be promoted in one or more seminaries of learning."

I wish merely to state that that is the provision of the old Constitution. It was reported from the Committee on Education, and in a House in which there was not a quorum of members was rejected. I think we ought to put it into the new Constitution.

The amendment was rejected.

Mr. MANN. I now move that the article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

RAILROADS AND CANALS.

Mr. COCHRAN. I move that the Convention proceed to the second reading of the article reported by the committee of the whole on the subject of railroads and canals.

On the question of agreeing to the motion proposed by Mr. Cochran, a division was called for, which resulted forty in the affirmative, and forty in the negative.

So the motion was not agreed to.

OATHS OF OFFICE.

Mr. BUCKALEW. I hope the Convention will indulge me with a single remark. I am in favor of taking up those articles on which there is no serious contest and sending them to the Committee on Revision and Adjustment this week, before we proceed to the consideration of

the articles that will necessarily involve debate.

Permit me to read a list of the articles that are yet not acted upon :

The article on cities and city charters.

On county and township officers.

On future amendments.

On revenue and taxation.

On oaths of office.

We can certainly get through all these articles this week, and then there will be left but three on which there will be discussion. Those three are :

Railroads and canals.

The Legislature.

The judiciary.

I move that the Convention now proceed to the second reading and consideration of the article on oaths of office.

The motion was agreed to.

The PRESIDENT *pro tem.* The first section will be read.

The CLERK read as follows :

"Members of the General Assembly and all judicial, State and county officers shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation :

"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth ; and that I will discharge the duties of my office with fidelity. And I do further solemnly swear (or affirm) that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the salary and mileage allowed by law. Nor will I vote for or advocate any matter in which I have or expect to have, directly or indirectly, any private interest whatever."

Mr. KAINE. I move to amend the section by striking out all after the word "I," where it last occurs in the seventh line, and inserting what I send to the Chair.

The CLERK read the words proposed to be inserted as follows :

"That I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except for actual and proper expenses ; nor have I knowingly violated any election law of this Commonwealth or procured it to be done by others in my behalf. And I do further solemnly swear (or affirm) that I will not

knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law.

"The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken. Any person refusing to take said oath or affirmation shall forfeit his office ; and any person who shall be convicted of having sworn or affirmed falsely or of having violated said oath or affirmation shall be guilty of perjury and be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth."

Mr. KAINE. Mr. President: I have changed the phraseology of that oath in order to meet the views of several gentlemen who voted against this proposition upon a former occasion. They complained that candidates were necessarily put to expense in procuring their nominations and elections, such as printing tickets and things of that kind ; so I have added there that they have paid out no money except for necessary and proper expenses in obtaining their appointment, nomination or election.

I think that will meet the views of every gentleman upon this floor who is anxious to destroy the fraudulent practices that now prevail not only in obtaining nominations but in procuring elections afterwards. The Convention has already adopted an oath for members of the General Assembly very nearly similar to this ; but I see no propriety in requiring members of the Legislature to take an oath of this kind and excepting equally important officers in the Commonwealth. If members of the Legislature are required to take an oath such as I hold in my hand and such as has been adopted by the Convention, I hold that sheriffs, prothonotaries, and all elective officers, many of them more important than a member of the General Assembly, should be required to take a similar oath. If the amendment which I have now offered is adopted, we shall have then a general oath to be taken by all officers of the kind there enumerated, as well as by members of the General Assembly.

This subject has been discussed heretofore very fully. The members of the Convention understand it as well as I do, and I do not intend to detain the Convention by any extended remarks upon the subject. All I desired to do was just to explain wherein the change has been made from the report as made by the committee.

Mr. HAY. My ear did not catch much of the amendment, excepting the exception it contained, which has been read by the chairman of the Committee on Oaths of Office. That exception seems to me to be very objectionable, and if retained the amendment should not be accepted. It proposes to confirm the propriety of candidates paying money to *procure* their nominations. To that I think there is very grave objection, and for that reason if for no other I shall not vote for the amendment. It should certainly be altered in this respect, or rejected. Such a principle is very reprehensible.

Mr. LAWRENCE. Let us have the amendment read.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK again read the amendment.

Mr. BUCKALEW. That section would of course require an amendment after the word "expenses." It would be a very vague term indeed to mention "expenses" without having them defined. In England the character of the expenses has been defined carefully by statute. Several statutes have been passed in recent years specifically setting forth what expenses are proper and legitimate for a candidate, which he may incur without bringing himself or his agents within the laws in relation to bribery or bringing them within the condemnation of the statute in relation to frauds in parliamentary elections. It is necessary, I think, to amend the amendment by inserting after the word "expenses" the words "expressly authorized by law," or something of that sort. Then by statute from time to time the Legislature can draw the line between those outlays which shall be innocent and lawful and those which shall be condemned. I hope the chairman of this committee will accept that idea in some form.

Mr. KAINÉ. I propose to amend the amendment—

Mr. BUCKALEW. I believe I should be willing to vote for it then, though applied to all the officers in the State.

Mr. KAINÉ. I propose to amend the amendment by inserting after the word "expenses" the words "expressly authorized by law," so as to read: "Have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except for actual and proper expenses expressly authorized by law," &c.

Mr. BUCKALEW. I will say a word more. I am willing to vote for this oath. Although I do not myself place as much confidence in oaths as some gentlemen seem to do, I am willing to take their judgment upon the materiality of this check upon official delinquency, and I think, coupled with a statute regulation as to the character and extent of the expenses which candidates for office may incur, the oath may perhaps be useful in our future polity. In the form in which it was first proposed, I should not vote for it.

Mr. HARRY WHITE. Mr. President: I understand this is reported by the Committee on Oaths as a substitute for or to prevent the necessity of passing a special provision relative to different and particular officers. Now, I observe in the report of the Committee on the Legislature that the ninth section, which provided for the manner of swearing and the character of oath to be administered therein, remains intact. I want the attention of the chairman of the committee to this question: Do I understand that it is not the intention of the Committee on Oaths to interfere with the oath as reported and adopted by the committee of the whole, on the legislative report? I would like to have an answer to that interrogatory.

Mr. KAINÉ. I do not understand the gentleman's question.

Mr. HARRY WHITE. I observe in the report of the Committee on Legislature, the form of oath as reported by that committee, and which has passed second reading. Is it desired to interfere with that?

Mr. KAINÉ. No, sir. If this oath is adopted in this form, then it will be a matter for the Committee on Revision and Adjustment to arrange it.

Mr. HARRY WHITE. Oh, no.

Mr. KAINÉ. Mr. President: I would prefer to have one general oath. In explanation to the gentleman from Indiana, I will say that this subject had been spoken of both in the report of the Committee on Legislation and the Committee on Legislature, and it was suggested that

a general oath should be prepared by the Committee on Oaths for all officers, and a report was made accordingly. Since that report has been made an oath has been adopted by this Convention as contained in the report of the Committee on the Legislature. I would prefer having this one general oath; but if such is the desire of the Convention, it will be very easy to strike out "members of the General Assembly" in the first line of this proposition, leaving it to apply to all other officers.

Mr. HARRY WHITE. I do not agree with the delegate from Fayette, that this is a proper matter to leave to the Committee on Revision and Adjustment. It is a question for the Convention itself to settle primarily. I have no feeling on this subject, but I do not like the general manner of administering the oath as provided for in the section under consideration. I prefer to have the oath administered to members of the Legislature in the formal manner provided by the report of the Committee on the Legislature, and if it is the sense of the Convention to leave that as it is, I will take it. I now move, for the purpose of testing the sense of the Convention on this subject, to strike out the words "members of the General Assembly" in the section under consideration. The effect of this will be to leave the form of oath and the manner of administering it to members of the Legislature, the same as have already been adopted on second reading in the report of the Committee on the Legislature, and then this oath will apply to all judicial, State and county officers.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Indiana (Mr. Harry White.)

The amendment was rejected, there being on a division, ayes thirty-eight, noes thirty-nine.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Fayette (Mr. Kaine.)

Mr. CORSON. I understand that if we adopt the oath prescribed by the gentleman from Fayette, we shall then have two oaths to be administered to members of the Legislature. I presume the idea is to hold this one in reserve for use when the other wears out. (Laughter.)

Mr. MANN. I rise to a question of privilege. I move to reconsider the vote by which the amendment of the gentleman from Indiana (Mr. Harry White) was defeated. I voted against it supposing I

was voting against the amendment of the gentleman from Fayette.

Mr. KAINE. If the gentleman will wait until the amendment offered by myself has been disposed of, then the motion of the gentleman from Indiana can be reconsidered.

Mr. MANN. Why not now?

Mr. KAINE. The amendment offered by the gentleman from Indiana was not in order. It was not an amendment to the amendment at all. It was a motion to strike out part of the original proposition that was before the House. When the pending amendment is disposed of, then the amendment of the gentleman from Indiana can be considered, and then I shall be willing to go with him and fix it in that way.

Mr. MANN. If the whole action upon the latter motion shall be treated as not having been taken at all, then the remark of the gentleman from Fayette will be correct.

The PRESIDENT *pro tem*. The Chair will entertain the motion to reconsider. Is it seconded?

Mr. CORSON. I second it.

The PRESIDENT *pro tem*. The delegate from Potter moves to reconsider the vote taken on the amendment offered by the delegate from Indiana.

Mr. HARRY WHITE. I appeal to my friend from Potter—

The PRESIDENT *pro tem*. The motion is not debatable.

Mr. HARRY WHITE. I can appeal to him to withdraw it for the present, so that the amendment offered by the chairman of the committee can be voted upon, and then he can renew his motion.

Mr. MANN. I should like to know what sense there is in withdrawing it. But I withdraw it if the gentleman wants me to do so.

The PRESIDENT *pro tem*. The question now recurs on the amendment offered by the delegate from Fayette.

Mr. KAINE and Mr. HEMPHILL called for the yeas and nays, and they were ordered, ten delegates rising to second the call.

Mr. CORBETT. I move to strike out in the seventh line of the old print of this amendment the words, "I do further solemnly swear (or affirm)" and also in the eleventh and twelfth lines, the words, "I do solemnly swear (or affirm)." It will leave the sense of the section the same and prevent tautology and repetition, which is unnecessary. I dislike very

much that expression, "I do further solemnly swear (or affirm.)"

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Clarion (Mr. Corbett) to the amendment of the delegate from Fayette (Mr. Kaine.)

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem.* The amendment of the delegate from Fayette as amended is now before the Convention.

Mr. LAWRENCE. Let it be read as modified.

The CLERK read as follows:

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity, and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election, or appointment, except for actual and proper expenses expressly authorized by law; nor have I knowingly violated any election law of this Commonwealth, or procured it to be done by others; and further that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law."

Mr. HENRY W. SMITH. That oath requires the candidates for the offices named who are elected, to swear that they neither paid nor promised any money to procure their nomination. I should like to know how that oath can be taken by a successful candidate who runs as a volunteer or independent without any nomination?

Mr. EWING. As most of the Convention will recollect, at an earlier stage of the proceedings here, I advocated at different times very strict and stringent provisions in regard to bribery and corruption at elections and of officers. I should be very glad to see those provisions incorporated in the Constitution now, but the Convention has decided that they shall not be so incorporated. Now, to my mind it is utterly absurd to put an oath here, that officers are to take, swearing that they have not done certain things which we have already said we would not prohibit them from doing. You have got no law, you have got no Con-

stitutional provision which forbids the doing of these very things, and to my mind the oath now offered is an absurd one without something to back it. I should be very glad to see the suggestion of the gentleman from Columbia adopted in a little briefer form, so that they would answer if such laws should be passed, and I will offer here an amendment which is not my own; it will be found in the article reported by the Committee on Legislation, and I believe is in the words of Judge Black. I think it will apply to the case. In my opinion it contains all that ought to be in a preliminary oath. I therefore move to strike out the amendment of the delegate from Fayette, and insert:

"And I do furthermore swear that I believe myself to be lawfully elected to this office without any false return, bribery, corruption, or fraud committed by me or others with my consent."

The amendment to the amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the amendment of the delegate from Fayette, (Mr. Kaine,) upon which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted, yeas sixty-six, nays thirty-one, as follows:

Y E A S .

Messrs. Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Beebe, Bigler, Black, Charles A., Black, J. S., Boyd, Brown, Buckalew, Calvin, Carter, Clark, Corbett, Cronmiller, Cuyler, Dallas, De France, Dodd, Dunning, Elliott, Ellis, Fulton, Funck, Gibson, Gilpin, Guthrie, Harvey, Hay, Hazzard, Hemphill, Heverin, Horton, Hunsicker, Kaine, Lawrence, Long, MacConnell, M'Camant, M'Murray, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Russell, Smith, H. G., Struthers, Temple, Turrell, Wherry, White, Harry, White, J. W. F., Worrell and Wright—66.

N A Y S .

Messrs. Achenbach, Ainey, Barclay, Biddle, Bowman, Broomall, Campbell, Church, Corson, Curtin, Davis, Edwards, Ewing, Fell, Green, Hall, Knight, Lilly, M'Clean, M'Culloch, Mann, Mantor, Minor, Patterson, D. W., Porter, Pughe, Rey-

nolds, Smith, Henry W., Walker, Wetherill, J. M. and Wetherill, Jno. Price—31.

So the amendment was agreed to.

ABSENT. — Messrs. Addicks, Baker, Bardsley, Bartholomew, Brodhead, Bullitt, Carey, Cassidy, Cochran, Collins, Craig, Curry, Darlington, Finney, Hanna, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, Metzger, Newlin, Parsons, Rooke, Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Van Reed, White, David N., Woodward and Meredith, *President*—36.

Mr. MANN. I now renew the motion to reconsider the vote by which the amendment of the gentleman from Indiana (Mr. Harry White) was rejected, which is a simple question whether it is necessary to swear the Legislature twice, and it is not necessary to say anything about it.

Mr. H. W. PALMER. I second the motion. I voted against the amendment.

The motion to reconsider was agreed to.

The *PRESIDENT pro tem*. The question recurs on the amendment.

Mr. KAINE. As an oath has been adopted in the report of the Committee on Legislature, it will be proper now, I suppose, to strike this out.

The *PRESIDENT pro tem*. The amendment is to strike out "members of the General Assembly and," in the first line.

The amendment was agreed to, there being on a division, ayes, sixty; noes, two.

¶ The *PRESIDENT pro tem*. The question recurs on the section as amended.

Mr. HUNSICKER. I want the yeas and nays on it now.

Mr. HEMPHILL. I second the call.

Mr. HUNSICKER. I want to state the reason why I called for the yeas and nays. If any persons on earth should have this oath applied to them, it is the members of the General Assembly. We do not need it for any body else so much as for them.

Mr. NILES. I desire to say simply that you relieve the members of the General Assembly from all responsibility in reference to the manner of procuring their nominations; they may have paid five thousand dollars in the primary meeting to obtain an election which they intend to have the benefit of when they come to occupy their office, but a poor county commissioner cannot pay for the dinners of his delegates at the county nomination. That is exactly what we have done here. It has always been the practice in every county of the Commonwealth, I under-

take to say, for the successful candidate to pay the hotel expenses of the delegates; and here you will not permit a county commissioner, as I said before, to pay for the dinners of his delegates, while a member of the Legislature may pay as much as he pleases and go scot free.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Beebe, Bigler, Black, Charles A., Brown, Buckalew, Corbett, Cuyler, Dallas, Elliott, Fulton, Hall, Hay, Hazzard, Horton, Kaine, Lawrence, MacConnell, McCulloch, McMurray, Mitchell, Palmer, G. W., Palmer, H. W., Patton, Purviance, Samuel A., Read, John R., Reed, Andrew, Russell, Smith, H. G., Turrell, Wetherill, John Price, Wherry, White, Harry, White, J. W. F. and Worrell—38.

NAYS.

Messrs. Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Black, J. S., Bowman, Boyd, Broomall, Calvin, Campbell, Church, Clark, Cochran, Corson, Cronmiller, Curtin, Davis, De France, Dodd, Edwards, Ellis, Ewing, Fell, Gibson, Gilpin, Green, Guthrie, Harvey, Hemphill, Heverin, Hunsicker, Knight, Lilly, Long, M'Camant, M'CLean, Mann, Mantor, Minor, Niles, Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purviance, Jno. N., Reynolds, Rooke, Smith, Henry W., Struthers, Walker, and Wetherill, J. M.—54.

So the section was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Brodhead, Bullitt, Carey, Carter, Cassidy, Collins, Craig, Curry, Darlington, Dunning, Finney, Funck, Hanna, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, Metzger, Mott, Newlin, Purman, Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, *President*—41.

Mr. CORSON. I move that the article be referred to the Committee on Revision and Adjustment.

The *PRESIDENT pro tem*. There is nothing to refer. The Convention have voted the section down.

REVENUE AND TAXATION.

Mr. BROOMALL. I move to proceed to the second reading and consideration of

the article on Revenue, Taxation and Finance.

The motion was agreed to.

The PRESIDENT *pro tem.* The first section will be read.

The CLERK read as follows:

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. But the Legislature may, by general laws, exempt from taxation (except from the special assessments herein provided) public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

Mr. CAMPBELL. I move to amend by striking out the words "actual places of religious worship."

I offer this amendment because I do not believe in the policy of exempting church property from taxation. Such exemption is unequal and unfair. Large religious denominations are favored while those which are smaller in numbers are discriminated against. Such a policy is entirely in favor of the larger and richer denominations. We ought if possible to put a provision in the Constitution preventing the exemption from taxation of any church property. We should put an end to the abuses that we have suffered year after year in the passage of special exemption laws in the Legislature. I do not propose to discuss the matter at this time, but simply to call for the yeas and nays upon my amendment, as the principle involved in the amendment is familiar to all of us, and we are no doubt prepared at once to vote upon the question.

The PRESIDENT *pro tem.* Is the call for the yeas and nays sustained?

More than ten members rose.

The PRESIDENT *pro tem.* The call is sustained and the Clerk will proceed with the call.

Mr. HARRY WHITE. I understand the motion of the delegate from the city to be to strike out the words, "actual places of religious worship." I want to vote intelligently on that, and if I understand the construction of that sentence, it would be to prohibit the Legislature from exempting from taxation, parsonages.

Mr. BROOMALL. Certainly not.

Mr. HARRY WHITE. I submit, then, that the section itself excepts parsonages. As it stands it would allow the Legislature to exempt places actually used for religious

worship, but they could not exempt parsonages in connection with church property. We have had a policy in Pennsylvania in this regard since 1844. There was a general act passed in 1844 exempting a certain class of property from taxation—cemeteries, places of public worship, certain charitable associations and the parsonages used in connection with churches. From time to time there have been a number of special acts of Assembly passed making special exemptions in this State, and I am told that in this city these exemptions amount in the aggregate to about fifty millions of dollars. I do not know whether that is correct or not, but it was so represented by some of the Representatives from Philadelphia last winter; whereupon the Legislature passed a law repealing all those special laws and enacting a general law upon this subject which to-day is upon the statute book. That general law exempts from taxation all churches, all cemeteries, all parsonages, and I think, five acres of land if used in connection with a church, but I do not recollect how that fact is.

I submit that it is wise and proper to retain in the Legislature the power to pass a general law exempting from taxation parsonages which are used in connection with churches, and believing that this is wise and proper, I shall vote against the amendment offered by the gentleman from Philadelphia.

Mr. BROOMALL. I have no particular objection to the amendment proposed by the gentleman from Philadelphia. So earnest am I in my endeavor to get rid of the abuses of the principle of exemptions adopted by the Legislature, that I should be willing to prevent the Legislature from exempting from taxation any property whatever. But I incline to believe that it will be more satisfactory to the people to exempt actual places of public worship. I do not agree with the gentleman from Indiana in thinking that the present act of Assembly has hit upon the right plan with reference to this subject, that is the plan that exempts parsonages and cemeteries; because the term "parsonage" is a term that may be somewhat loosely applied, and under it we can hardly tell to what extent the Legislature may go in exempting property from taxation. The privilege of exemption from taxation has been very much abused by the Legislature, and the people desire a correction of that evil. I think, however, that they will be satisfied with simply

having their places of worship exempted, but would not be satisfied if the exemption were to be extended to the parsonages. Many churches have no parsonages, and for that reason this provision would act unequally upon the sects.

Mr. BOYD. Will the gentleman be kind enough to say why church property should not be taxed like other property?

Mr. BROOMALL. I have already intimated that I know no reason; but I think as we are cutting up a very great evil, it is better for us to be satisfied with what we know will be accepted by the people, rather than to ask so much that we shall get nothing. I think the masses will see that we have done a great deal in cutting down the exemptions to the point reached by this section and will be satisfied with our work; whereas, if we go further, we may array an opposition to us that, added to the opposition upon a great many other questions, will weigh down our work. I therefore would prefer to let the section remain as it is.

Mr. D. W. PATTERSON. It appears to me that if this amendment prevails the Legislature will not be able to exempt from taxation the actual places of worship of any denomination—

Mr. BOYD. Why should they?

Mr. D. W. PATTERSON. It has been the universal law in this State ever since we have become a Commonwealth. It does not deprive the treasury of any needed revenue; it does equal justice to all; and I hope we shall retain the section without amendment.

Mr. BOYD. They are the richest people alive.

The PRESIDENT *pro tem*. The question is upon the amendment of the gentleman from Philadelphia (Mr. Campbell.) Upon that question the yeas and nays have been ordered and the Clerk will proceed with the call.

The yeas and nays were taken and were as follow, viz:

YEAS.

Messrs. Boyd, Campbell, Ewing, Fell, Gilpin, Guthrie, Hemphill, Knight, MacConnell, McCulloch, Murray, Patterson, T. H. B., Reynolds and Smith, H. G.

—14.

NAYS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Banman, Barclay, Beebe, Biddle, Bigler, Black, Charles A., Black,

J. S., Bowman, Broomall, Brown, Buckalew, Calvin, Carey, Carter, Church, Clark, Cochran, Corbett, Corson, Cronmiller, Curtin, Dallas, Davis, De France, Dodd, Edwards, Elliott, Ellis, Fulton, Funck, Gibson, Green, Hall, Harvey, Hay, Hazard, Heverin, Horton, Hunsicker, Kaine, Lawrence, Lilly, Long, McClean, Mann, Mantor, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Russell, Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry, White, J. W. F., Worrell and Wright—81.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Brodhead, Bullitt, Cassidy, Collins, Craig, Curry, Cuyler, Darlington, Dunning, Finney, Hanna, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, McCamant, Metzger, Mott, Newlin, Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, White, David N., Woodward and Meredith, *President*—38.

Mr. HARRY WHITE. I offer the following amendment to the section: Insert after the word "worship" the words, "also parsonages owned by any church or religious society, with the lands attached, not exceeding five acres."

I misapprehended the amendment of the delegate from Philadelphia (Mr. Campbell.) I thought his object was to include this clause. I now merely want to call the attention of the Convention in this connection to the general law which was passed upon this subject last winter by our Legislature. The amendment which I have offered is in entire harmony with the spirit of that law, and I trust that the Convention will adopt my amendment. This law, bearing date eighth of April, 1873, provides:

"That all real estate within this Commonwealth shall be liable to taxation for all such purposes as now are or hereafter may be provided by general laws."

Then it recites certain exceptions and among them that to which I specially refer, which is as follows:

"Also exempting from taxation all parsonages owned by any church or religious society, with the lands attached thereto, not exceeding five acres; also excepting and exempting from such taxation all burial lots exempted by the pro-

visions of the act of April fifth, one thousand eight hundred and fifty-nine, entitled 'An act relative to incorporated cemetery companies;' and the lands and premises of all cemetery companies where such property is held in trust for the sole purpose of improving said lands and premises, and whose revenues, of whatever kind, are devoted to that object, and in no way enure to the benefit or profit of the corporators or any of them; and also excepting and exempting from such taxation all lunatic asylums, almshouses, poor-houses, houses of refuge, penitentiaries, and asylums, schools and hospitals, supported by the appropriations annually made thereto by this Commonwealth, together with the lands attached to the same; and also excepting and exempting from such taxation all charitable institutions founded by charitable gifts or otherwise, the chief revenues for the support of which are derived from voluntary contributions, together with the lands attached to the same; and all laws or parts of laws inconsistent with the provisions of this statute be and the same are hereby repealed."

This is the general law upon that subject, which was passed last winter. It was passed after careful consideration, and it cuts up by the roots all the special laws upon that subject. I submit that the Legislature ought to have the power to exempt from taxation all churches and places of worship, if in their wisdom they see fit to do so; and they should also have the same power to a limited extent with reference to parsonages. This may be a hardship in some cases, but in some parts of this Commonwealth it is fair and right for poor congregations that it should be done. There are a great many congregations in certain sections of the State which have been able to build a little church, to get a little ground and erect a comfortable parsonage. Their revenues are small, and it is right and proper that when we exempt their places of worship the Legislature should have the power to pass a general law exempting their parsonages.

Mr. BROOMALL. I think this proposition liable to very great abuse, and I trust the Convention will not adopt it. The great body of the religious communities of the State have no parsonages, and I think this provision would act very unequally, because it would only benefit those churches who are wealthy enough to have parsonages.

Mr. HARRY WHITE. I will modify my amendment by withdrawing the part relating to the five acres.

Mr. BROOMALL. That does not help it any.

Mr. COCHRAN. I hope this amendment will not prevail. I see no necessity why we should exempt parsonages from taxation. I do not know that we should be controlled by the fact stated by the gentleman from Indiana, that the Legislature passed a certain act last winter. Such a proposition as this is capable of very great abuse. A church may erect a parsonage and may not occupy it. It may rent it out and receive an income from it, and in that way the parsonage would be exempt from taxation while occupied for other purposes, and the State will be deprived of a revenue to which it is justly entitled. You propose here to exempt nothing but simply churches or places of worship. Yet churches have put up for their use buildings which still are not churches and are not parsonages. They have buildings for Sunday-school purposes and lecturing purposes during the week. You do not exempt them under this provision of the Constitution; why, then, should you exempt the parsonages? There is no reason for it, and I think the exemption should extend no further than to places of public worship. If congregations are able to build parsonages, they are able to pay the taxes on them.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs upon the section.

The section was agreed to.

The PRESIDENT *pro tem*. The second section will be read.

The CLERK read as follows:

SECTION 2. All laws heretofore passed, or hereafter to be passed, exempting property from taxation, other than the property above enumerated, shall be void."

Mr. H. W. PALMER. Upon the section I desire to make a single remark. It is entirely unnecessary from every point in view. It provides that "all laws hereafter to be passed exempting property from taxation, other than the property above enumerated, shall be void." Of course they are void, whether this section is in existence or not. We have provided in the first section of this article "that all taxes shall be uniform upon the same class of subjects." Well, now, suppose the Legislature should pass a law by the operation of which taxes would not be uniform, what would become of the law?

It would be void, of course, and there is no necessity whatever for this section.

Mr. BROOMALL. The words include "all laws heretofore passed."

Mr. H. W. PALMER. I will come to that in a moment. I say that it refers to acts that may hereafter be passed, and for that purpose it is certainly unnecessary.

It also provides that laws heretofore exempting property from taxation shall be void. The very purpose of the first section is to provide that all taxes shall be uniform. When this becomes the organic law of the State and we find that there are laws inconsistent with it, what becomes of those laws? They are void of course. This section is entirely unnecessary and I hope it will be voted down.

Mr. BROOMALL. I submit that it is necessary as far as the words "heretofore passed" are concerned. Certainly it is. I grant that the words "hereafter to be passed" are unnecessary, and if the gentleman moves to strike them out, I have no objection whatever. But I hold that something is necessary there to specifically repeal existing laws, or at least it is necessary to have a provision there by which they are repealed, so as to operate upon the exemption laws that have been heretofore passed.

I move to amend the section by striking out the words "or hereafter to be passed."

The amendment was agreed to.

Mr. BUCKALEW. If we are to put a section of this kind into this article, we might as well declare at the end of every article that all laws of the Legislature inconsistent therewith shall be repealed or void. This is entirely unnecessary. If there are laws either already passed or hereafter to be passed, that conflict with the organic law of the State, of course they must crumble before the Constitution.

Mr. HAY. I move to amend by adding at the end of the section, as follows:

"And the value of all property exempted from taxation in each county shall from time to time be ascertained and published, as may be provided by law."

Mr. President, I do not know what reasonable objection can be made to the adoption of this amendment. It is certainly important, indeed necessary, to all safe and wise action upon the subject of the tax laws of the State, that the people and the Legislature should have afforded

to them the information which this proposition, if adopted, will secure to them.

The object of this amendment is to afford all the citizens of this State, sir, an opportunity of knowing what property and to what value in the State is exempted from taxation. There is now no means whatever by which this fact can be ascertained. Property exempted from taxation is simply passed over by the assessors in each county, when making up their lists for assessment, and no return of it whatever is made to any authority in the State, neither to the county commissioners or to the Legislature. My attention was directed to this matter last fall when endeavoring to ascertain how much property, and what kind of property, in my own county was exempted from taxation, either under general or special laws. And, sir, I was utterly unable to arrive at any exact or accurate data whatever upon the subject. Neither the assessor to whom I applied nor the commissioner of the county could give me any information. I could find, it is true, by diligent search into acts of Assembly for many years past, a few particular properties which were exempted from taxation under the operation of special laws. But it was impossible to find out what properties were exempted under the operation of general laws. I endeavored to ascertain this fact by application to the census bureau at Washington, thinking that the information I desired might be obtained from the returns made by the United States officers. But I found that the information which was obtained from that office was altogether too vague for my purpose, in many particulars inaccurate, probably from the incorrectness of the reports made, and not at all to be relied upon; and it certainly seems to me that we ought to have some means of ascertaining how much of the property of all kinds in the State is exempted from taxation, whether by general laws or by special enactments which have been heretofore passed.

I hope this amendment may be adopted in order that we may have such information which certainly is very necessary to be had in order that there may be proper legislation upon the subject of taxation, and the people of the State are entitled to know how the burdens of the State are distributed; where property exempted from bearing its share of those burdens is situated, of what it consists, and what is its value. My object is to give them this knowledge.

The amendment was rejected, there being on a division, ayes thirty-four, noes forty-one.

The PRESIDENT *pro tem.* The question recurs on the section.

Mr. ALRICKS. I move to strike out all the words of this section except the two first and the three last and to insert the words "inconsistent herewith;" and then it will read "all laws inconsistent herewith shall be void."

Mr. HUNSICKER. I cannot see what possible good there can be in this section. (I think the gentleman from Columbia

Mr. Buckalew) hit the nail on the head exactly, because every provision of our amended Constitution will be in violation of some act of Assembly, and the act of Assembly, as a matter of course, will fall before it. It will be the duty of the Legislature to remodel the acts of Assembly in conformity with our organic law, and if it is necessary to put a provision of this kind in here, it ought to be put in every other article. I hope that the lawyers of this Convention will not fall into this error, as it is if I am right about it, and I think I am, and that they will vote this unnecessary section down.

Mr. MANN. Mr. President: There must certainly be some mistake about this. It is not possible that we are repealing all the laws of this Commonwealth not consistent with this Constitution. That would create a revolution. There is no lawyer on this floor who stops to think about it who will assert that simply because laws heretofore passed are not in consonance with this Constitution, therefore they are repealed. There are hundreds of laws heretofore passed which will be inconsistent with this Constitution that will not be affected by it, as I believe, and I am very much afraid, if this section is not passed, that the vast amount of property exempted from taxation now will remain exempt, and therefore I appeal to the delegates to insist upon this section. I very much fear that this article will only affect laws hereafter passed unless we retain this section.

Mr. ARMSTRONG. Mr. President: It seems to me that the necessity for this second section depends entirely upon what construction is placed upon the language of the first section, which says that taxation shall be uniform upon the same class of subjects. There is no prohibition in the first section; it is directory, and requires that taxes shall be uniform upon the same class of subjects; but it is

by no means certain what interpretation is to be placed upon that phrase. What is a "class of subjects?" Why may not a general law which would exempt all parsonages be applicable to a class of subjects? and if there be doubt upon this, it is remedied by the second section, which is prohibitory. But the first section is purely affirmative and contains no prohibitory provision.

I agree entirely with the view of the gentleman from Columbia that it is unnecessary to insert any special provision in the Constitution declaring that a law is repealed by operation of the Constitution where it has a clear application; but it seems to me that it does not have in this place, nor can I find in the first section anything which would prohibit the Legislature, if they please, from exempting parsonages or other property which may form a distinct class in their judgment. It is not complete without the second section, and I think it ought to be retained.

Mr. EWING. Mr. President: A word in regard to the amendment offered by the gentleman from Dauphin (Mr. Alricks.) It would be proper enough, provided there was anything in this first section except the matter of exempting property; but the first part of it requires taxes to be uniform. Now, there will have to be a section in the schedule which will save certain things. I will give an example. By the consolidation of various boroughs with the city of Pittsburg, the debts of the old city and of those boroughs are kept separate, and separate taxes are assessed for them, although they are all in the same municipality. That is one class. I know of a number of other things in which we shall have to save the equities of municipalities by a section in the schedule, and therefore his amendment is not proper here.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. ARMSTRONG. I would move to amend this second section by striking out in the first line the words, "heretofore passed or hereafter to be passed," so that it will read, "all laws exempting property from taxation, other than the property above enumerated, shall be void."

The PRESIDENT *pro tem.* That is not an amendment to the amendment. The first question is on the amendment of the gentleman from Dauphin.

Mr. ALRICKS. I accept that as a modification.

The PRESIDENT *pro tem.* The delegate from Dauphin withdraws his amendment, and the amendment of the gentleman from Lycoming is now in order.

Mr. ARMSTRONG. I move then to strike out in the first line of the second section the words, "heretofore passed or hereafter to be passed," so that it will read, "all laws exempting property from taxation, other than the property above enumerated, shall be void."

The PRESIDENT *pro tem.* The words "or hereafter to be passed" have already been stricken out.

Mr. ARMSTRONG. Well, then, strike out the words "heretofore passed."

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Lycoming.

The amendment was agreed to.

The PRESIDENT *pro tem.* The question is on the section as amended.

The section as amended was agreed to.

The PRESIDENT *pro tem.* The next section will be read.

The CLERK read as follows:

SECTION 3. The Legislature may, by general laws, uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities, boroughs and townships the power to make, renew and maintain local improvements by special assessments of taxation of contiguous property or of property specially benefited thereby, without exception on account of use or ownership."

Mr. EWING. I move to amend the section by inserting after the word "townships," in the third line, the words "either separately, or where contiguous jointly."

Those words were in the section as agreed on, in the Committee on Revenue, Taxation and Finance, and by some blunder of the Printer were left out in the printing of the section. They are, I think, necessary and proper to meet some cases that may occur and frequently do occur, where, for instance, as in the suburbs of a city, as occurs very frequently in our county, we have boroughs adjoining closely built up, where no person could distinguish between them, and it is necessary that the dividing streets should be improved jointly. Again, where they are divided by a small stream, where it would be proper and necessary to construct a bridge by them jointly. It would cover that sort of cases, and I think it is proper, and was, as I say, agreed on in committee.

Mr. BROOMALL. The gentleman is mistaken about those words having been agreed upon in the final action of the committee. They were virtually embraced in the wording of the section. If the Legislature has power to make this provision at all, it has power to accommodate the law to the case of joining neighboring towns.

Mr. EWING. No, sir, I think not. I think there is another section that prohibits that, and I beg the pardon of the chairman of the committee for doubting his recollection. I drew this section. It was agreed on in consultation. It was passed with those words in. It was reported within five minutes of the time and there was no possibility of there being any such consultation as he speaks of.

Mr. BROOMALL. I may be mistaken.

Mr. EWING. It was agreed upon on full consideration by the parties who were considered in the committee especially representing the cities and boroughs. I think it important.

Mr. BUCKALEW. As this section reads it seems to me to be quite objectionable. In the first place I should like to strike out in the third line the words "and townships." No such power as this has ever been vested in townships; nor is there, as I understand, any demand for its extension to them in any part of the Commonwealth. This power of arbitrary assessment for the making of local improvements has been hitherto confined to cities and boroughs alone, and it is a power which, in my judgment, is neither necessary nor proper in the townships of the State.

Again, sir, I am not sure that I am speaking to the amendment; but I find in the fourth and fifth lines the words "special assessments or taxation of contiguous property"—that I can understand, but it goes on, "or of property specially benefited thereby." There you leave contiguity altogether, and you may go on to any point in the municipality where the discretion of the assessors conceives that an advantage may accrue.

Now, Mr. President, although this power of special assessments and taxation in our towns and cities seems a necessity to procure local improvements, it is a power very dangerous in its character and liable to oppression and abuse. Already we hear of great complaints at the arbitrary and capricious manner in which this power of the local authorities is exercised in our towns and cities, particularly in

our towns. The law is now in a state of uncertainty. There is no rule by which you can limit the assessment upon property benefited by the opening of a street or other local improvement in a town or city. The law does not yet, as a rule, clearly determine whether the property to be assessed is to adjoin the improvement, or to be upon the same square with the improvement, or to be anywhere along the line of the same street, whether half a mile or two miles distant.

This power of laying a particular, special, arbitrary assessment upon the property of the citizen, I repeat, is a very dangerous power. It is exercised in a summary manner by the town authorities. The persons who make the assessment relieve themselves to a certain extent from taxation by the imposition which they themselves place upon their neighbor's property, because these assessments lighten the common taxes of the municipality for the improvement.

I desire to amend by striking out the fifth line and inserting "or of property," so that the section will read, "the taxation of contiguous property specially benefited thereby."

THE PRESIDENT *pro tem*. That would not be an amendment to the amendment now pending.

MR. BUCKALEW. No, sir; I am only indicating on the printed section before me what I desire to accomplish. I desire to strike out the words "and townships." It is not in order now, and I will propose it afterwards.

THE PRESIDENT *pro tem*. It is proposed to strike out "and townships" after "boroughs" in the third line.

MR. EWING. I will modify my amendment by striking out the words "and townships," and inserting the words I proposed before, "either separately or where contiguous jointly."

THE PRESIDENT *pro tem*. The amendment of the gentleman from Allegheny is so modified.

THE CLERK. The section will then read:

"The Legislature may, by general laws uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities and boroughs, either separately or where contiguous jointly, the power to make, renew," &c.

MR. BUCKALEW. I object to the amendment. I object to the making of this assessment by the local authorities at all. At present, under the general borough

laws, the local authorities have no power over the assessments. Those assessments are made by persons appointed by the courts, and they make report to the courts. The local authorities can take the property for public use where they open a street, and they can ask for a jury to view the damages done to the adjoining property-owners, and the power of the jury may be extended to the assessment then to be made against property-owners; but the local authorities have nothing to do with these assessments, no control over them. They are made under the authority of the courts. This section as proposed to be amended is to give this power of assessment to the local authorities, and therefore it ought to be rejected.

MR. CUYLER. Mr. President: I am in favor of the section just as it is written, reported by the committee, without the amendment, and coming from the city of Philadelphia, which, so far as its highways are concerned, has been down-trodden and oppressed by the Legislature for years past, I see the greatest possible necessity for just such an enactment as this section provides for. Nor do I sympathize with the amendment proposed by the gentleman from Columbia, because I draw a distinct meaning for each branch of the section on the fourth and fifth lines; that is to say, I clearly perceive the distinction between the taxation for "contiguous property" such as would be done in the case of paving a street, and the charge upon "property specially benefited thereby," such as would be made in the case of the opening of a street. The one is intended to apply to the case where the improvement is directly in front of the particular property where the particular property of course would properly be charged with the expenditure. The other is intended to apply to an improvement which, affecting more than two or three directly on the street, benefits a neighborhood. Therefore I think both clauses are proper to remain in the section, and the section just as it is written is precisely what we want. I am, therefore, opposed to the amendment and in favor of the section as it stands.

MR. J. M. BAILEY. I am also opposed to the amendment suggested by the gentleman from Columbia, and might suggest another instance of what has been stated by my friend from Philadelphia (Mr. Cuyler.) That is the case of a sewer where it might pass down one street and might benefit property to quite a distance

from the street, not contiguous to it; and if this be stricken out, that property would have to pay no part of the assessment for the making of the sewer.

Mr. BUCKALEW. I beg to explain. No such amendment of mine is now pending.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny (Mr. Ewing.)

Mr. BUCKALEW. The only possible motive for such a clause as this in the Constitution is to settle a question of disputed power in the Legislature. Now, the courts of our State have held that the Legislature does possess the power to pass these very laws. There are such laws here in existence, and they are being acted on. Therefore there is no reason for putting the clause into the Constitution, and using words here that we do not exactly understand. That the power exists is now unquestioned in the State. It has been exerted. It has been gravely argued, not only in our State, but in other States of the Union, whether the Legislature have this power; but it is settled in this State. Therefore I submit we had better leave this section entirely out of the Constitution.

Mr. WHERRY. I desire to know what the precise amendment now before the Convention is.

The PRESIDENT *pro tem*. The Clerk will read the pending amendment.

The CLERK. The amendment is to strike out the words "and township" and insert "either separately, or where contiguous jointly," so as to make the section read:

"The Legislature may, by general laws, uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities and boroughs, either separately, or where contiguous jointly, the power to make, renew and maintain local improvements," &c.

Mr. WHERRY. I think the slightest consideration of members of this Convention will assure them that this is an absolutely necessary section. These are powers that have been conferred by the Legislature, I know, to a certain extent, and yet they are powers that are constantly disputed, not only in Pennsylvania, but in every other State of the Union.

But, sir, I rose to oppose particularly that amendment which strikes out the word "townships," and to give my reason for opposing it. If there be any reason in the world why these powers shall

be granted to cities and boroughs, there can be no reason given for withholding them from the other municipal corporations of the State. This sort of improvement is just as necessary in the country districts as it is in the city districts. There are proportionately just as many of these public improvements to be made in the country as there are in cities and in large boroughs.

I allude to one particularly—one which has been the subject of contest and dispute in almost every State in the Union—the opening of drains through contiguous land. It will not do for the gentleman from Columbia to say that the right and power of the Legislature to enact these laws is decided. He will remember, when I mention it, that the Legislature of New York two years ago passed a drainage law and that it was pronounced unconstitutional by the highest tribunal in that State, and although hundreds of thousands of dollars were invested in these drains, the parties who invested their money did it at their own expense, and they are now litigating for a recovery and will probably never obtain it.

I ask that if this section pass at all it be extended to the country districts, so that a general drainage law may be made applicable and be made constitutional.

Mr. HANNA. Mr. President: With due deference to gentlemen who have advocated this section, I must say that I do not see any necessity for it whatever, because we propose in this section to give the Legislature authority to pass general laws on the subjects mentioned, whereas in the report of the Committee on Legislation we have provided for this very subject by saying that the Legislature shall not pass any special or local law in regard to the very subjects contemplated by this section, namely, "regulating the affairs of counties, cities, wards, townships, boroughs;" "authorizing the laying out, opening, altering or maintaining of roads, highways, streets, or alleys;" "vacating roads, town plats, streets or alleys;" and many other instances of a similar character. Therefore the Legislature must provide for all the wants of the cities, counties, townships and boroughs by general law; and why place a special section to cover that in this article when we have already provided for it in the report of the Committee on Legislation?

I hope, therefore, that this section will be voted down.

Mr. WORRELL. Mr. President: I agree with my colleague who has just spoken, and trust that this section will be voted down. We are all aware that the Legislature is vested with all the powers which are not excepted by the Constitution; and the power to pass general laws with regard to improvements in the various municipalities would exist in the Legislature if it were not restricted by any provision which we insert in the Constitution. But under the language of this section the citizen would be improved out of his property by a general law, which is the most dangerous of special legislation, because apparently applying to a subject generally, but really intended only to reach a single instance of a particular class. Those laws I say are the most dangerous examples of special legislation; and under this section a general law could be passed which would improve the citizens of this city out of their property.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Allegheny (Mr. Ewing.)

The amendment was rejected.

Mr. CUYLER. I move to amend the section by striking out in the first line the word "may," and inserting "shall," so that it will read:

"The Legislature shall, by general laws, uniform as to the class and kind of improvements, vest in the corporate authorities of cities, boroughs and townships, the power to make, renew and maintain local improvements," &c.

The purpose of the section then would be simply this: It would deposit the power of determining whether it was proper that such improvements should be made in the local authorities. It would make those who are near the people who are to be affected by such improvements, who are to be benefited by them, who are to pay for them, the judges of the necessity for the improvements and of the manner in which they should be done. It seems to me to be only reasonable and proper. In other words, bringing it down directly to the point so far as the city of Philadelphia is concerned, it would require the Legislature to provide by general laws that the local authorities of the city should determine whether sewers should be built, whether paving should be done, whether streets should be opened, whether we have any control whatever of our highways; for as we stand here to-day in the city of Philadelphia, there is not the smallest power up-

on the part of the local authorities of the city over its highways. I cannot say this in censure of the Legislature at all, because I believe the fact to have been that the men who represented this city in the Legislature were themselves corrupt, and were the source of the corruption that has brought about the difficulty that we have suffered here, for I believe the general practice has been in the Legislature, so far as local questions were concerned, to refer them to the members from the particular district; but the actual effect of that in the city of Philadelphia has been that the men who have represented the particular district in the Legislature have been base men, corrupt men, and men who have forgotten the duty they owed to the people who sent them there. I am sorry to say that last night has shown that, notwithstanding the consciousness on the part of the city of Philadelphia of the infidelity of many of these men to their trust, they have been again renominated for office, and will probably be elected and sent there unless the adoption of this new Constitution shall work out a different state of affairs.

I am therefore in favor of the doctrine that the people who are to pay for these improvements, the people for whose especial use they are to be made, shall themselves, through their local legislatures, be the judges of the reasonableness and of the propriety of each particular improvement, whether it shall be made and how it shall be made. Therefore, I desire to see this section made imperative in its terms, and not leave it as the law now is, in the exercise of an option on the part of the Legislature, which option never would be exercised, for of course they would not willingly give up a power which had been deposited in their hands.

These, sir, are my reasons for this amendment.

Mr. BUCKALEW. I should like to ask the gentleman a question. Is he aware that in the legislative article all power to grant special laws by the Legislature on these subjects is taken away?

Mr. CUYLER. I consider the thing so imperative that I would pass it into every article of the Constitution, so as to ensure it.

Mr. BUCKALEW. You do not write so many other things into it.

Mr. TURRELL. The gentleman says he is in favor of this section because it makes the people who are to pay for these im-

provements the judges of their values, and of the damages, and so on. Now, I can point him to a city in this State where council ran into debt some \$700,000 or \$800,000, and the whole of them did not pay ten dollars tax. I say this section is an outrageous one, and it ought to be voted down.

MR. CUYLER. I should like to ask the gentleman what proportion of the taxes of the city of Philadelphia are paid by the members of the Legislature, whom he would desire to have the power to pass on this question?

MR. TURRELL. I do not know anything about that.

THE PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia, (Mr. Cuyler,) to strike out "may" and insert "shall."

MR. CUYLER. I ask for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call, and being taken resulted as follow:

YEAS.

Messrs. Andrews, Baer, Bailey, (Huntingdon,) Boyd, Broomall, Calvin, Carey, Carter, Church, Corson, Cronmiller, Curtin, Cuyler, Fell, Guthrie, Harvey, Hazard, Kaine, Knight, Littleton, MacConnell, M'Culloch, Mott, Porter, Reynolds, Russell, Stanton, Struthers, Wetherill, Jno. Price and Wherry—30.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bannan, Biddle, Bigler, Black, Charles A., Bowman, Brown, Buckalew, Campbell, Clark, Cochran, Davis, De France, Dodd, Edwards, Elliott, Ewing, Finney, Funck, Gibson, Gilpin, Green, Hall, Hanna, Heverin, Horton, Howard, Hunsicker, Lawrence, Lilly, Long, M'Camant, M'Clean, M'Murray, Mann, Mantor, Minor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Putton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Smith, H. G., Smith, Henry W., Turrell, Walker, Wetherill, J. M., White, Harry, White, J. W. F. and Worrell—62.

So the amendment was rejected.

ABSENT. — Messrs. Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Bullitt, Cassidy, Collins, Corbett, Craig, Curry,

Dallas, Darlington, Dunning, Ellis, Fulton, Hay, Hemphill, Lamberton, Landis, Lear, MacVeagh, Metzger, Newlin, Palmer, G. W., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, *President*—41.

THE PRESIDENT *pro tem*. The question recurs on the section.

MR. EWING. If the gentleman from Columbia now can hear me, I should like to explain why I think there is some necessity for this section. He says that the Legislature has full power to do all this.

MR. J. N. PURVIANCE. Allow me to ask the gentleman, does he desire that other members shall hear as well as the gentleman from Columbia? [Laughter.]

MR. EWING. Yes, sir, I shall be very much obliged to them if they will listen because a number of them have expressed opinions which I think they would not have expressed if they had read the decisions of the Supreme Court and the laws relating to this subject. I venture to say that at the present time no man, be he lawyer or layman, can undertake to guess with reasonable certainty what the decision of the Supreme Court of this State will be in regard to any act of Assembly or ordinance of city councils with reference to opening streets, making sewers, or any municipal improvements of the kind. They have within the past few years laid down principles which will enable them to decide either way on any case that may arise. Take the Hammet case, in the city of Philadelphia; take the Washington avenue case, in Allegheny, and several cases of that sort. Now, I think it is necessary that we should put something in the Constitution which would set at rest these questions.

MR. TURRELL. May I ask the gentleman a question?

MR. EWING. Certainly.

MR. TURRELL. I ask whether there is not a fair prospect that the district court of Allegheny might settle the question after the next election? [Laughter.]

MR. EWING. I am not able to say. [Laughter.] That it is necessary that there should be some authority to assess the cost of local improvements in cities and boroughs on the property benefited, I think no one will doubt who has paid attention to the matter. Without that, you would absolutely stop a large portion of the improvements in every growing city. It is unfair and unjust to tax the

main body of the city to make improvements which are benefiting almost entirely some particular section; and even in the best way you can make them you will usually tax the old parts of the city for the benefit of the new in making their improvements. I undertake to say that it is done in this city, it is done in Pittsburg, and probably in every city in the State.

Mr. KAINE. I wish to ask a question. Would not the Legislature have the power to pass laws of this kind without this provision in the Constitution?

Mr. EWING. I undertake to say that the Supreme Court of the State has unsettled the law in regard to that so that it is very doubtful what the power of the Legislature is. They have decided in some cases that the Legislature have the power, and they have decided directly reverse principle, that they have not the power, in what I think are similar cases.

Now, further, in regard to the necessity of it, we have in the first section which we have just passed declared that "the taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." That is a new constitutional provision and would still further complicate the questions arising from the decisions of the Supreme Court on the subject. I believe it will prohibit any such local assessments without this section.

Now, in regard to the difference between assessing on "contiguous property" and assessing on "property specially benefited thereby," that is a principle that has been recognized in the legislation of the State for many years. Ordinarily where a street is opened, the cost of it has been put on the contiguous property; but when sewers are made, or when some great leading avenue is made, then it has been considered proper to determine by a jury of viewers what property is specially benefited thereby and assess the cost on that. Property which is not contiguous is just about as much benefited and occasionally more benefited than the property which is contiguous. It is proper to make that distinction, and the Legislature must, in passing laws, make them general as to the class of improvements. The cost of one class of improvements might require to be assessed on property specially benefited thereby, whether contiguous or not, and others it would be proper to have the assessment on the property contiguous.

The PRESIDENT *pro tem*. The question is on the section.

Mr. ALRICKS. I call for the yeas and nays.

Mr. H. W. SMITH. I second the call.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Andrews, Baer, Broomall, Carey, Carter, Cochran, Corson, Cuyler, Ewing, Fell, Hazzard, Horton, Knight, Littleton, MacConnell, M'Culloch, Porter, Read, John R., Stanton, Wetherill, J. M., Wetherill, J. Price and Wherry—22.

NAYS.

Messrs. Alricks, Armstrong, Bailly, (Per ry,) Bailey, (Huntingdon,) Bannan, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brown, Buckalew, Calvin, Campbell, Clark, Cronmiller, Curtin, Davis, De France, Dodd, Edwards, Elliott, Ellis, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hall, Harvey, Howard, Hunsicker, Kaine, Lawrence, Lilly, Long, M'Camant, M'Clean, M'Murray, Mann, Mantor, Minor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Smith, Henry W., Struthers, Turrell, Walker, White, Harry, White, J. W. F. and Worrell—68.

So the section was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Black, J. S., Brodhead, Bullitt, Cassidy, Church, Collins, Corbett, Craig, Curry, Dallas, Darlington, Dunning, Hanna, Hay, Hemphill, Heverin, Lamberton, Landis, Lear, MacVeagh, Metzger, Mott, Newlin, Palmer, G. W., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, President—43.

Section four was read as follows:

SECTION 4. The property and business of manufacturing corporations shall not be taxed in any other manner or at any other rate than like property and business of individuals.

Mr. DODD. I move to amend by inserting the words "or mining" after "manufacturing" in the first line. If this is a correct principle to be applied to manufacturing corporations, there is no reason in the world why it should not be applied

to mining corporations as well. I am in favor of applying it to both classes.

Mr. HARRY WHITE. This is an exceedingly important section and I call the attention of delegates to the question. If passed, it will seriously affect the revenues of the Commonwealth. I observe that the provision is that "the property and business of manufacturing corporations shall not be taxed in any other manner or at any other rate than like property and business of individuals." Now, it is well known that the reason why we were able to pass the act of 1866 exempting real estate from taxation, and last year to exempt nearly all personal property in this Commonwealth from taxation, was because of the reception of the revenue necessary for the State government from the taxes on certain kinds of corporations. It is very well known that by the act of 1868 we now impose a tonnage tax on the transportation of corporations, and that yields a revenue of over a million of dollars a year to the Commonwealth. We also impose a tax upon the capital stock of corporations, which yields a revenue of something over three hundred thousand dollars. We have imposed a tax upon the income of corporations. That was taken off by the last Legislature. We yet retain a tax upon the dividends of corporations. Now, if you pass this section, you repeal the laws upon the statute book regulating the reception of revenue to the Commonwealth. We to-day receive from corporations over three millions of dollars of revenue. If you pass this section you repeal those laws entirely. Now, I submit that this Convention should have a good reason for doing so before they do it.

Mr. NILES. Mr. President: I am surprised at the position taken by the delegate from Indiana, since the body of which he was a member last winter took the tax off corporations on their gross earnings, and I believe that the delegate from Indiana supported that measure.

Mr. HARRY WHITE. I did not.

Mr. NILES. The record does not show that the delegate opposed, it I believe.

Mr. HARRY WHITE. The record does show that the delegate from Indiana opposed it.

Mr. NILES. I have been informed to the contrary.

Mr. HARRY WHITE. The gentleman has not been informed properly. I spoke and voted against it.

Mr. NILES. I am glad to hear it. But, Mr. President, what is this proposition? It seems to me that it is eminently fair, and I should like to have the delegate from Indiana tell me or tell this Convention why the property of a manufacturing company should be taxed twice, which is done to-day all over the Commonwealth. I should like to know why ten men owning a saw mill with a thousand acres of land should pay all the local taxes, all the local assessments that are put upon it, just the same as upon the property of an individual, and then why their income, why their gross earnings, and if they declare no net dividends why their bonds or their stock should be taxed again? I know many of these concerns in my section of the State where the men are poor, not able in their individual capacity to make the proper improvements, and they are paying double taxes there; and they are paying them all over the Commonwealth. Now will the delegate from Indiana tell me why this is right? Can he give any reason why two individuals should pay a great tax upon their net earnings and their gross receipts, and if they pay no dividends, then on their stock, while the same property owned by an individual pays not a dollar of tax of that kind, and each of them bears the same burdens in reference to all local and State assessments.

Now, what this section proposes to do is simply to say that the property of a manufacturing company, a lumber company or a mining company, in the language of the amendment of the gentleman from Venango, which pays all the local assessments, pays all the State and county taxes, pays everything that is paid by the property of an individual, shall not again be assessed on stock or dividends or gross earnings. It seems to me that it is eminently fair; and it commended itself so much to the committee of the whole that there was no objection made against it.

Mr. BROOMALL. It is well known to every gentleman here that the property of certain corporations is taxed peculiarly, as for instance the carrying corporation. The Legislature has applied the same principle to certain local corporations, such as manufacturing companies, which are after all little more than mere business firms, and is taxing them in the same way. The committee thought that these local corporations should be treated as individuals; that there was no reason why ten men incor-

porated should pay taxes on the same property in a different manner from individuals. If, however, the Convention think otherwise, let them vote down the section. The committee that reported the article thought it wise to limit this peculiar taxation to the railroads and other similar corporations, and not to let it apply to these small corporations, owners of property that pay taxes just like individuals pay taxes, and many of which compete with individuals by their side, owning, probably, as much to the individual as these own to the corporation. We thought they should be treated as individuals are treated, and not as the great railroad carrying corporations are treated.

Mr. HARRY WHITE. The remark of the delegate from Tioga (Mr. Niles) makes it necessary for me to say a word—

The PRESIDENT *pro tem*. The rule of the House requires unanimous consent.

Mr. HARRY WHITE. I merely ask to explain. It is too important a question to pass by lightly.

The PRESIDENT *pro tem*. The rule forbids the gentleman speaking out of order. He has already spoken on this question.

Mr. MANN. Mr. President: The statement of the gentleman from Indiana certainly is worthy of consideration. This section will very seriously affect the finances of Pennsylvania if adopted, and the Convention has already in the first section of this article required equality of taxation. Now, this fourth section goes further and attempts to do a work which properly belongs to the Legislature, and we undertake to do it without the lights and guides that the Legislature would have. I venture to say there are not ten of the delegates on this floor who can tell the effect the adoption of this section will have. I confess I do not know what its effect will be, and I do not believe there are ten men on the floor who know what it will be. I do know that it will very seriously affect the finances of the State, and I believe that it will impose additional taxes on the farmers and workmen of the Commonwealth. For that reason I trust it is not to be passed without more light than I have yet heard shed on it.

I think it is one of those sections described by the gentleman from Philadelphia this morning, calculated to load down and burden unnecessarily the Constitution of the State which we are fram-

ing, putting a burden upon it that may do a possible good but is certain to do a great deal of harm.

There are many reasons why the business and property of associations of every description should be assessed differently from the property of individuals. By the privileges given to associations they acquire greater facilities for making money than individuals can have, and they are exempt from many burdens that are imposed upon individuals, and for that reason and for various others they have privileges and immunities that cannot be taxed in the way that individuals are, and it ought to be left to the wisdom of the Legislature, reflecting the will of the people, to devise such means of assessment as will equalize the burdens of taxation throughout the State.

I trust therefore this section will not be passed until we have more light than has yet been given us upon it.

Mr. ANDREW REED. I move to strike out "in any other manner or," in the second line.

Mr. EWING. Is that an amendment to the pending amendment, to add the words "or mining?"

The PRESIDENT *pro tem*. It is not, and therefore it is not in order. The question now pending is on the amendment of the gentleman from Venango (Mr. Dodd) to insert the words "or mining" after "manufacturing."

Mr. J. M. WETHERILL. I call for the yeas and nays.

Ten gentleman rising, the call for the yeas and nays was seconded, and they were taken with the following result:

Y E A S .

Messrs. Baer, Bannan, Boyd, Calvin, Campbell, Carey, Carter, Church, Cochran, Corson, Curtin, Davis, De France, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Gibson, Green, Guthrie, Hall, Harvey, Hazzard, Knight, Lawrence, Lilly, M'Camant, M'Clean, M'Culloch, Mantor, Niles, Palmer, H. W., Parsons, Patterson, D. W., Purviance, Samuel A., Russell, Smith, H. G., Struthers, Walker, Wetherill, J. M. and Wetherill, Jno. Price—43.

N A Y S .

Messrs. Alricks, Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Broomall, Brown, Buckalew, Cronmiller, Finney, Funck, Gilpin, Horton, Hunsicker, Kaine, Littleton, Long, Mac-

Connell, M'Murray, Mann, Mitchell, Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Reed, Andrew, Reynolds, Rooke, Smith, Henry W., Stanton, Turrell, Wherry, White, Harry, White, J. W. F. and Worrell—40.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Bullitt, Cassidy, Clark, Collins, Corbett, Craig, Curry, Cuyler, Dallas, Darlington, Dodd, Dunning, Hanna, Hay, Hemphill, Heverin, Howard, Lamberton, Landis, Lear, MacVeagh, Metzger, Minor, Mott, Newlin, Palmer, G. W., Pughe, Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, *President*—50.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. H. W. PALMER. I am opposed to the section because it is in conflict with the first section which we have adopted. It is exceptional. That provides that all taxes shall be uniform. Now, this section excepts out certain corporations, to wit, mining and manufacturing corporations. It provides that the taxes on these corporations shall not be uniform because it provides that they shall not be taxed differently from the property and business of individuals. That leaves it to be inferred that other corporations, corporations other than mining and manufacturing, may be taxed in a different manner from individuals.

Now, either the first section means something or it means nothing. If all taxes on all classes of subjects are to be uniform, then the taxes on corporations ought to be uniform. Now, what are the subjects of taxation? They are horses and mules, lands, and such things, and the Legislature cannot make any distinction between corporations and individuals so far as property is concerned. You cannot make a class of mules and say this mule shall be taxed at one rate because it belongs to a corporation, and that mule at another because it belongs to an individual. And the same rule will apply to all the subjects of taxation. When you say in the first section that all taxes shall be uniform, you prohibit the Legislature from ever making any distinction in the taxation of any kind of property that is held in common by individuals and corporations. Now, I agree that you may tax the franchise of a company be-

cause no individual holds it. You may make the franchises of companies a subject and say they shall be taxed in a certain way, and that tax will not apply to individuals, because individuals are not possessed of franchises; and that is right, because franchises give companies advantages which individuals do not possess.

This section has no meaning whatever, and it ought to be voted down.

Mr. HUNSICKER. I oppose this section for quite a different reason, and that is, because we now tax these corporations more than we do individuals, and we raise a very large portion of our State revenue from such taxation, and notwithstanding we do raise that large revenue by that species of taxation, the manufacturing companies in the State are in exceedingly prosperous condition, and they can afford to pay the taxes. I think if we pass this section the State will be cut off from that source of revenue.

Mr. COCHRAN. Mr. President: It seems to me that there is a point of view in which this subject may properly be considered, which would appear to justify the passage of this section. If I remember aright, the Executive of this State, in his last annual message, for reasons which he stated, and which were satisfactory to him, urged the Legislature to relieve this particular class of corporations from the taxation which was levied upon them, because the effect of that taxation was to oppress that class of labor in the State, and to keep capital from coming into the State and being employed in this kind of productive industry.

It has been contended here that the section should not pass, because it will detract from the amount of revenue received into our State Treasury. I have not understood any gentleman yet to say that it would bankrupt it, or reduce the amount received below an amount which would be right and proper to be paid into the treasury. For my own part I believe that the great evil is, that the revenues of this State are redundant, they are beyond the actual needs of the State government, economically and carefully conducted, and it would be a movement in the direction of economy and of purity, if the revenues were reduced to something below their present amount. Those sources of revenue are such as are continually increasing, and the deficit which would seem to be made in the amount of receipts into the State Treasury by the passage of this section would soon be filled by the

natural growth and increase of revenues from the remaining sources.

Now, Mr. President, I believe it is a fact that from year to year there is an amount of at least \$1,000,000 carried over in the treasury and which is made a fund for the emolument of those who are immediately connected with that branch of the government. That million of dollars is of no public benefit. It may redound to private profit. Why should such an amount of money as that be constantly carried over in the Treasury of this State from one year to another? Whom does it benefit? Certainly it does not benefit the people of the Commonwealth. It is a dead fund lying there, unproductive to the State and unbeneficial to the people, and probably a source of corruption to political and public morality. Now, sir, I apprehend that some reduction in the amount of the revenues of this Commonwealth would not be detrimental to the Commonwealth itself or to the people of the State; and unless it can be made to appear to me that passing a section of this kind would be so injurious and would reduce the amount of revenue received to such a condition that the government of the State could not be conducted under those receipts, then I think this section should be passed.

Mr. BUCKALEW. Mr. President: I am fixed in my opinion with reference to this question of taxation. It is no new opinion with me. It is this, that with the exemption of the few objects which we have already enumerated in this article to be exempt, the taxing power of the Commonwealth shall be left unaffected by anything we do. In times of war, in times of financial distress, this great mother of ours, the Commonwealth, must be able to put her hand, if need be, upon all our resources in all possible forms. We have seen such times and we cannot be certain that they will not come upon us again.

Now, we have been told here that this tax on gross receipts, which was oppressive on some of the corporations, was repealed last winter as soon as a demand was made upon the Legislature, and if these corporations or any other of our corporations are oppressed by our revenue laws they will always be heard by the Representatives of the people at Harrisburg; their voice will be always powerful whenever injustice shall be done them. But do not let us here in the fundamental law impair the public power over

these sources of revenue which in future times may be necessary for the public welfare, possibly even to the existence of the State.

This looks specious on the face of it, that the property and business of mining and manufacturing companies shall not be taxed in any other manner, nor at any other rate, than the property of individuals. It is a plausible form to put it in. But the section is based on a false assumption, which is that these corporations and individuals engaged in similar business do stand on the same level. It is not so. These corporations have special laws which enable them to make money. These men who have large capital are permitted by your Legislature to invest it in those pursuits under provisions which are exceedingly advantageous to them and from which they reap higher rates of profit than the average rate in this State. They are not subjected to individual liability for all the debts accumulated in their business if they are unfortunate. They throw the burden upon the great mass of our people. Our laws protect this corporate property of theirs; our courts are open and are occupied by their business, and to the common expenses and burdens of government they should contribute when necessity demands it at different rates or in other fashions from the great mass of our people. They are not upon the same plane and level. To be sure I would not here in this Constitutional Convention regulate the manner in which they should be taxed. I would not say that they should pay a dollar upon any business in which they engage, upon their stock or upon their dividends, or upon any business of production or transportation in which they may engage. I would leave them where all our people are left, to the judgment and discretion of the political department of the government, which from time to time can adjust our revenue system, first to the public necessities, next to the ability and means which individuals or corporations may command as sources of contribution to the public necessities.

I beg gentlemen to let this business of adjusting the revenue laws alone. What do we know about it? Who has laid before us statistics? What financial officer of the government has reported to us the financial condition of the State and pointed out the sources of revenue which may be dried up, or other sources which may be opened? Without any information,

blindly and in the dark, here by a single vote you have placed all the mammoth mining companies of this State in this section. I do not see any reason why they should not be put in if manufacturing companies are put in. I do not see any reason or particular ground of equality why you should not put in other corporations. My idea is that you shall let this subject alone, because you are incompetent to pass upon it, you have not the means of passing upon it; you cannot judge of the necessities of the State. It is a subject which is not within your proper jurisdiction.

Mr. President, it is impossible, of course, for me to go into a general argument on the subject. All I can do is to throw out some of the general views which I hold, which I hope gentlemen will turn over in their own minds and make up their judgments to let this subject rest where it does now—where it always has rested from the time Penn founded this city on the banks of the Delaware to this moment. By this disposition of the subject we shall best perform our duty.

Mr. J. PRICE WETHERILL. Mr. President—

Mr. H. G. SMITH. If the gentleman will give way, as it is only one minute of seven o'clock, let us adjourn. I move an adjournment.

The motion was not agreed to.

Mr. J. PRICE WETHERILL. Mr. President: I suppose this Convention have almost made up their minds as to what they intend to do in regard to this section; but I feel that I must say a word upon the subject because I am satisfied that there are two sides to it, and not one merely as would appear from the remarks of the gentleman from Columbia. He talks about impossible emergencies that may arise in the State, and asks what shall we do if we so cripple the revenue laws of the State that we cannot raise money enough in time of war and in time of pestilence? Why, sir, when the day of pestilence comes and when another civil war takes place, we never will raise the money needed from direct taxation, but we will raise it as we should raise it, upon the faith and credit of the State of Pennsylvania, and it comes just as quickly, aye, more quickly in that way than by any direct taxation which we can possibly attempt to impose upon our people.

Again, the gentleman from Columbia says that we must not touch the revenue laws of the State, but that we must leave that matter to the Legislature, that we must not cripple these laws in that way. Why, sir, we have just limited the power of the Legislature by a section in regard to church and other property used for religious purposes. We have thus crippled the revenue of the State to a very large amount, perhaps, and this Convention in that way deem it right and proper for us to legislate in regard to the revenue of the State, and at the same time, in regard to corporations we have no such right! Is this consistent?

A great deal has been said in regard to the amount of revenue that these corporations pay. How much is it? We receive \$2,600,000 from all the corporations annually, and I venture to say that the manufacturing corporations do not pay an annual tax of over \$450,000. Shall we, because the manufacturing corporations of the State are taxed to a sum so insignificant as \$450,000, cripple that enterprise, for we do cripple that enterprise by levying a tax upon it greater than we do on individuals.

Mr. EWING. Will the gentleman give way for a motion to adjourn?

Mr. BOYD. The hour has come.

Mr. J. PRICE WETHERILL. I hope I shall not be interrupted, for I shall finish in a very little while.

How will this operate if we continue to tax these corporations? We have agreed to free them, as much as possible, from liability, because we have desired to invite capital into the State of Pennsylvania in order that our manufacturing enterprises may be encouraged.

Now, sir, I know of a case in the city of Philadelphia, occurring within ten days, where \$500,000 of corporate capital was proposed to be invested in an article made out of raw material which comes from this State, an article made out of raw material the monopoly of which is now enjoyed by a firm in a sister city, an article of importance in the arts, and our people are compelled through that monopoly to pay a very large price for its use. The corporation to which I have alluded would have been formed on a capital of \$500,000 for the manufacture of that article, but for the reason that the laws here were oppressive and the laws in New England were not oppressive, and that money and

that corporation will probably go to New England, and its investment be lost to the manufacturing interests of the State.

will pause. According to the resolution passed the House is now adjourned, seven o'clock having arrived, until to-morrow at nine o'clock A. M.

The PRESIDENT *pro tem.* The delegate

ONE HUNDRED AND TWENTY-EIGHTH DAY.

THURSDAY, June 26, 1873.

The Convention met at nine o'clock A. M., the President *pro tem* (Hon. Jno. H. Walker) in the chair.

Prayer by Rev. J. W. Curry.

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

PERSONAL EXPLANATION.

Mr. J. N. PURVIANCE. Mr. President: I rise to a privileged question. I have just noticed in a Pittsburg paper the announcement of the death, at Harrisburg, of a gentleman from Butler county, and that he had upon his person a pass bearing the name of a member of the Constitutional Convention from Butler county. As I am a member from that county, I desire to say that the pass alluded to was not from me. I make this disclaimer as due to myself personally, as well as to the honor of my position as a member of this Convention.

LEAVES OF ABSENCE.

Mr. GREEN. I ask leave of absence for Mr. Brodhead for to-day and to-morrow. He desired me to state that he is a trustee of the Lehigh University, which has its commencement to-day, and his presence there is necessary.

Leave was granted.

Mr. H. W. SMITH asked and obtained leave of absence for himself for Saturday and Monday next.

Mr. PARSONS asked and obtained leave of absence for a few days from to-day for Mr. Metzger.

Mr. FUNCK asked and obtained leave of absence for himself for Saturday.

Mr. MANN asked and obtained leave of absence for Mr. Worrell for this afternoon.

REVENUE AND TAXATION.

The PRESIDENT *pro tem*. The next business in order is the article on revenue, taxation and finance, which is before the Convention on second reading, the pending question being on the fourth section, which will be read.

The CLERK read as follows:

SECTION 4. The property and business of manufacturing and mining corporations shall not be taxed in any other manner, or at any other rate, than like property and business of individuals.

Mr. J. PRICE WETHERILL. Mr. President: I do not intend to take up the time of this Convention in any lengthy speech upon this subject; but it seems to me that the argument advanced yesterday by the gentleman from Indiana (Mr. Harry White) and the gentleman from Columbia (Mr. Buckalew) and the gentleman from Potter (Mr. Mann) should be replied to. I do not intend to allude to the importance of the manufacturing interests of the State of Pennsylvania, because I believe that in this presence it would be useless.

The main argument against the adoption of the section is that the amount of revenue received from corporations, amounting to one-third of the entire revenue of the State, will be very materially lessened if we adopt this section. That idea was elaborated very extensively by the gentleman from Indiana in a very impressive speech, and we were led to believe that the repeal of the tax on the mining and manufacturing interests of the State of Pennsylvania would very materially lessen the revenue of the State. That I will reply to by some figures which I have before me, and I will endeavor to show that it is a mistake.

The gentleman from Columbia, carrying out that same idea, pictured to us the condition of things in the State of Pennsylvania in a case of great emergency; he alluded to war and pestilence; and that picture at first sight appeared to be alarming; but when we recollect that the mining and manufacturing companies of the State of Pennsylvania pay into the revenue of the State annually but a comparatively small sum, I think to rely upon the tax upon manufacturing companies to support us during a time of war or during a time of famine and pestilence would be a very weak support upon which to rely.

Another argument was advanced by the gentleman from Potter, (Mr. Mann,) who

said that the farmer, who already was taxed sufficiently, would not care to have his taxes increased if the revenue of the State should be lessened by the repeal of the taxes on mining and manufacturing, would oppose it.

Now, what are the figures in regard to the matter under consideration? It is true that corporations throughout the State of Pennsylvania do pay a very large tax. They pay a tax on corporation stock of \$1,300,000; on earnings, \$348,000; on receipts, \$457,000, and on loans \$492,000, amounting in all to \$2,600,000. These figures look large, and I do not wonder that the gentleman from Indiana was a little careful lest so large a source of revenue derived from the corporations of the State should be diminished. But, sir, the manufacturing companies of the State pay but very little of that amount. The bulk of that money comes from railroad companies, from insurance companies, and from companies other than mining and manufacturing in the State. In order to more fully understand this I will state that the manufacturing companies purely pay but about eight per cent. of this entire sum. We have throughout the State but about forty iron manufacturing companies; we have in the State but seventy-three miscellaneous manufacturing companies; we have in the State but about fifty gas companies, and those three classes of companies are the only companies in the State that can be called manufacturing companies purely, and when you come to look at the amount of tax which they pay and the amount of revenue which we receive from them it seems to me it is the height of folly for us to attempt to tax companies of this sort, especially when if you will remove the tax and aid the association of capital and the establishment of large manufacturing companies you will thereby greatly enlarge the industrial interests of the State.

Why, sir, the sum received from the manufacturing companies of the State of Pennsylvania amounts to little or nothing when you come to look at it. What tax do they really pay, and what amount of revenue do we receive from them? On the tax on corporation stocks we have one million three hundred thousand dollars. The iron companies pay on that their proportion, only forty-seven thousand dollars. The miscellaneous companies only pay fifty-three thousand dollars, and the gas companies only pay twenty-five thousand dollars. Thus it will be

seen that of a tax collected from railroad companies and others of one million three hundred thousand dollars, the only tax which these manufacturing companies pay—and which I should like very much if this Convention would relieve them from—they pay only one hundred and twenty-five thousand dollars. So I could go on with the other items and show that out of this enormous amount of \$2,600,000 that the gentleman from Indiana talks about, this great amount of revenue about which guards should be placed, the manufacturing companies only contribute eight per cent., \$211,000, no more, no less. These are the figures; and I think in the face of these figures, when we come to consider these manufacturing companies about which there is so much talk and which we should encourage, we should remove this tax, not that it is of any great amount; but when you come to associate capital, when the skilled labor which was talked about here the other day desires to associate capital with it, when two persons desire to form a company, what do they do? They first look at the taxes which they will have to pay, and then the liability which they will have to assume. Now we have removed the liability, and the only thing in the way of making this a perfect success so as to have a perfectly free manufacturing law is to remove this tax of \$211,000 of which I have spoken.

Let me give you an instance of that. We have in the city of Philadelphia two hotels, the Girard house, working on individual enterprise, and the Continental hotel, working on corporate capital. They both pay the same amount of taxation, they are both assessed equally, they both derive profits from the same kind of business, and yet one must pay a State tax of \$1,500 to \$2,000 into the State Treasury and the other pays nothing. That is an illustration of the manner in which this taxation operates, and when it comes to bear upon small companies, men of careful business habits, men who look closely into their annual expenses year by year will, of course, understand that these taxes will interfere with their business and they will not associate capital into individual companies with this tax hanging over their heads; and by that means we will check the very thing that we desire.

I think I have clearly shown that this great amount of taxation, \$211,000, will not interfere with the revenue of the State, if we release it altogether, and I have fully

answered the objections offered by the gentleman from Columbia (Mr. Buckalew) as to the difficulties that may arise in times of war and pestilence, and shown that that is rather an exaggerated idea. Having disposed of this what remains?

We come to the farmer. The gentleman from Potter (Mr. Mann) has said that the farmer will object to this tax because the farmer pays a certain amount of revenue into the State Treasury, and if the tax upon these corporations be removed, it will to that extent increase the taxes of the farmer. We have often heard of this old farmer, and I begin to think that there is a great deal of the myth about him. We heard about him when the question of the rate of interest was before the Convention, and he proved to be such a bugbear that he defeated what I conceived to be a very good measure. I hope that now he will not prove to be such a bugbear here as to defeat so good and wise a measure as this.

What do the farmers pay as State taxes, for the figures again become important in this additional phase of this argument? They pay \$500,000 of taxes annually on personal property, and out of that half a million the farmers of Potter county pay annually the enormous sum of \$650. I do not think the gentleman from Potter can complain of that amount of tax. And there is one thing that I want to allude to here, which is this: I would not insult the intelligence of the farmers of Potter county or the farmers of the State of Pennsylvania by arguing that when they pay an indirect tax it is not as hard a burden as a direct tax. When they pay a tax on coal, which they do, for every tax which is placed by the State upon a coal company, every tax which is placed upon a mining company, every tax which is placed upon an oil company, is indirect tax upon the consumer. It is not necessary to explain that. Every one who knows anything about political economy understands it. Corporations when they make their calculations of the cost of any article mined or manufactured put these taxes into their estimate of cost and charge them to the purchaser. I would therefore say to the farmers of Potter county that if they do not pay directly the taxes which are imposed upon corporations, they indirectly pay these taxes on every ton of coal which they use, on every gallon of oil they burn, and on every manufactured article that enters into their annual expenses. It is for the

benefit of the farmers that these taxes upon manufacturing and mining companies should be removed in order to do away with this indirect tax which the people of Pennsylvania pay to the amount of \$2,600,000 annually. It is true that they do not pay it directly, but they pay it virtually. The transportation companies and the mining companies and the manufacturing companies are the mere avenues through which the consumer pays these taxes.

Let us look at this rationally. Let us look at this as prudent business men, and I think if we do we shall see the justice of this section and pass it.

Mr. CAREY. Throughout almost our whole history we have done our best by the imposition of stupid liabilities and unjust taxation to drive capital out of the State, and to prevent it from coming into the State. Thank heaven, we have now abolished the liabilities. Let us now abolish the injustice. The time has come when it must be done. It must be done if we would preserve our position in the Union. The south and the west have advantages for manufacturing ten fold greater than ours. We are just at the extreme edge of the iron and coal. To find them in greatest abundance you must go to Alabama, to Virginia, or to Missouri. All over the South and West they have advantages for both the cotton and the iron manufacture, and for other manufactures, as well as for the mining of coal, far beyond our own.

What are they doing? Almost every city, every county, and every borough is begging people to come and bring capital, promising that they shall be free from every description of taxation; not only that they shall be put on an equality with other people, but that they shall be put above all others, and that their taxes shall be paid by their neighbors. Only this morning I have found in the *Press* of this city a letter from the South, which says that, "to encourage the establishment of industrial enterprises, the States of Georgia and Alabama have enacted that such enterprises shall be exempt from all State and municipal taxation for a period of ten years following their establishment, and this exemption applies to the entire property, machinery and working capital of the enterprise."

In Virginia, close neighbors to us, they are making a road, the Chesapeake and Ohio, that will give advantages for the

manufacture of iron ten fold greater than anything we have. Let that State offer bounties on the introduction of capital, while we maintain taxes on it, where will capital go? It will go to Virginia; it will go to Missouri, a State admirably adapted for manufactures; it will go anywhere but here.

It is said that the farmers will object to this section. Why Mr. President, for every dollar that we put into the treasury by these taxes upon manufacturing companies, our farmers pay ten for want of markets close at home for their products. I might say \$20 are paid by the farmers for every dollar that is paid by these corporations in the way of tax. But for these restrictions which are driving corporate capital away from us, the farmers would have a market at home for their products that would make every farm in the State vastly more productive. Already we have freed ourselves from some of these restrictions, and I now hope we shall be relieved of all the rest. Our manufacturers have always labored under disadvantages, and yet we have grown. We have great advantages as compared with the north and the east, but our natural advantages are small when compared with the south and the west. We have grown in despite of our bad legislation; we have grown in spite of our injustice; and we have grown in spite of all the stupidity that has been piling up restrictions on the introduction and employment of capital.

One of two things we must do. We must either give this up or we shall not be able to retain our position in relation to the other States of the Union. If we would keep pace with them this provision must be adopted.

MR. ARMSTRONG. I do not desire this Convention to take a vote upon this section without, in a very brief manner, expressing my views upon it. I believe that the policy of Pennsylvania has heretofore been disastrous in the extreme. I do not mean to say that our manufactures are not large, for they are; but I do mean to say that they are much less than they ought to be. They are not only less, but the material resources of Pennsylvania are carried out of the State and manufactured elsewhere, and I appeal to gentlemen of this State, particularly gentlemen from the border counties, who know the facts perfectly well, if millions of dollars of capital which were desired to be invested in Pennsylvania have not

stepped across the border, and been invested in Ohio and New Jersey, principally for the very purpose of avoiding the onerous taxations which are imposed upon those interests in Pennsylvania. I could now point across the river to within three miles of the very place at which we are now sitting, where not less than \$5,000,000, for aught I know three times as much, has been invested of capital that sought investment in Pennsylvania but was deterred by reason of our excessive taxation.

Now let me show just for a moment the difference between Connecticut and Massachusetts and Pennsylvania. In those States the manufacturing laws are very liberal and it has been their policy to invite the investment of capital. In Pennsylvania we have a population by the last census of 3,521,951. In Connecticut they have a population of 537,454. The products of manufactures in Pennsylvania were \$711,894,344. In Connecticut \$161,065,474. Now, upon the basis of population, if the populations were equal, which they are not, Connecticut would have an annual production of manufactures of over \$1,000,000,000; our population is more than six times greater than that of Connecticut, and upon the basis of an equal population the manufactures would have been considerably beyond \$1,000,000,000.

Our population exceeds that of Massachusetts about two and a-half times. Our population, as I have stated, is 3,521,951. Their population is 1,457,351. Their products were \$553,912,568. Upon the same basis of calculation as to population, Massachusetts would have manufactured \$1,384,000,000 in the same time, and with the disadvantage of being compelled to convey the resources of Pennsylvania hundreds of miles to be manufactured there, and chiefly because they have encouraged manufactures by a system which gives confidence to capital in its investment. We not only ought to relieve the manufacturing interests of our State from taxation which discriminates against them, but we ought to relieve the anxiety of capitalists so that we may restore such public confidence upon the question as will invite the investment of capital within the State. This policy has been pursued in the interior of the State to some extent, by that instinct of business which indicates to the people in particular instances the surest ground of investment.

I know very well that in the town of Bellefonte, in the county of Centre, when

it was proposed to establish a car factory, the citizens raised a bonus of \$10,000 and the town council passed an ordinance by which they exempted the works of the company from local taxation for ten years; I heartily approve such a policy, for the enhanced value of property and the increase of capital invested will so increase the subjects of taxation that the town will be greatly advantaged by this liberal policy. So I believe it would be in the State, for by a liberal policy pursued towards manufactures we would invite into the State an amount of capital which would ultimately render the State a largely increased revenue beyond that which could be provided by this system of taxation upon manufactures as they exist or would be likely to exist under the policy of excessive taxation which has heretofore prevailed in the State.

As to any apprehension of the future as was suggested by the gentleman from Columbia, I doubt not if any emergency arises in Pennsylvania when it will be necessary to tax the people and manufacturing interests in this State, it will be found entirely sufficient to tax the manufacturing interests and the people in their individual capacities alike. It is a principle of justice; and no calamity can befall the State which will not equally affect its associated and its individual capital alike. Under a liberal policy the amount of manufacturing capital invested in the future would so increase the subjects of taxation that the State would be largely the gainer.

The illiberal policy of taxation upon manufactures in Pennsylvania is known abroad; it has largely deterred the investment of capital within the State, and we ought to put it into the fundamental law that such investments shall not be inordinately taxed, in order that the public confidence may be increased and that capital may be invited into this State. I regard it as a matter of exceeding importance. I trust this section will prevail.

Mr. EWING. Mr. President: I believe this is one of two sections that have been introduced into this body that look towards encouraging and protecting corporations, and for one I am heartily in favor of it. As a member of the Committee on Revenue, Taxation and Finance, I supported it, and I shall vote for it here as amended. The gentleman from Philadelphia who first spoke this morning (Mr. J. Price Wetherill) showed very clearly I think, and my own investigation of the

Auditor General's reports for two or three years preceding satisfies me that he is accurate in his statements, of the very small amount of revenue that would be lost to the Commonwealth by the passage of this section.

I am in favor of this section because I believe it to be necessary to cure an evil of very considerable magnitude and age, and one that is not likely to be cured by legislation. The evil is this: By the laws of Pennsylvania as they have existed for about ten years manufacturing corporations have been practically driven out of existence in this State; they have certainly been greatly discouraged. Our laws are calculated to drive men of moderate capital into being money-shavers rather than to invest in corporations which will develop the industries of the State. If A and B each having one hundred thousand dollars wish to invest in an iron manufacturing concern, they do so as a firm. They can do it. They can manage their own business, there being but few of them, and can keep it in control. They buy their land; they erect their buildings and machinery; they go into business. Perhaps they borrow one hundred thousand dollars more. They do it without let or hindrance from any law of the Commonwealth. They are taxed on the value of their property according to its value. But let twenty men or fifty men of small means who have five or ten thousand dollars apiece that they would be willing to combine in a corporation to invest in a manufacturing enterprise that would develop the interest of the State and build up population and wealth in the Commonwealth, undertake it, and they will have to pay precisely the same taxes on their property that A and B with their two hundred thousand dollars have to pay, all the local taxes on the full value of the property to support the county, the city, the State, schools, roads, everything, and in addition to that they have to pay a tax on their capital stock of two hundred thousand dollars. They have to pay a tax on any loans that they make; they have to pay a tax on their receipts and a tax on their dividends. These taxes in many cases amount to what would be a fair income on the investment.

Gentlemen in the western part of the State have told me that manufacturing corporations that they were in have paid in those additional taxes actually eight per cent. annually on their whole capital. The result of that imposition is that those

men of small means who are willing to invest, and to whom it is necessary to have a corporation to carry on their business, are driven out of manufacturing enterprises. They cannot succeed; and that capital is often invested in other States. I know personally of very large amounts of money that have gone from the western part of the State into Ohio because there a manufacturing establishment is taxed on the value of all its property just as the property of the individual would be. They are not subjected to any of these onerous taxes that are imposed upon them in the State of Pennsylvania. As a matter of fact quite a large number of manufacturing companies that had started in the western part of Pennsylvania have gone out of existence because they could not live; they have wound up their affairs and gone into some other business.

I admit that ordinarily the Legislature ought to be permitted to control all these matters of taxation, but the experience of ten years of attempts on the part of those engaged in manufacturing has shown that the Legislature cannot be safely trusted with this power. I do not know why it is; perhaps because the great corporations of the State that are not engaged in that sort of business wish to join the manufacturing corporations with themselves in the taxation and thus make it odious and secure the repeal of all taxation on their business. That may be one reason. Another reason *possibly* may be that *legislators* from certain parts of the State, not being so patriotic as we are in this Convention, may deem it popular to declaim in the Legislature for their constituents and say, "if you take the tax off these manufacturing corporations, our farmers will have to pay the tax." That argument may have some effect in the Legislature. Of course it has none here. But from one cause or another the Legislature has failed to remove these taxes; it has imposed these onerous and unjust taxes year after year on the manufacturing corporations of the State until they have been destroyed to a great extent.

But again; the gentleman from Lycoming (Mr. Armstrong) gave another reason why this provision should be placed in the Constitution, and that is this: If these taxes are repealed by the Legislature, say at the next session, the fact that they have been in existence so long and that they may at the very next session be re-imposed, will prevent capitalists from

investing in manufacturing enterprises where they may at any session of the Legislature be taxed out of existence.

Mr. HARRY WHITE. Mr. President: This is too important a matter to pass by without mature consideration—

Mr. COCHRAN. Our rule is that a gentleman shall speak only once on any subject. I do not wish to interfere with the gentleman from Indiana, but I am afraid the gentleman has already spoken on this subject.

Mr. HARRY WHITE. I am very much obliged to my captious friend from York, but I will submit to him that I have spoken but once on the question before the Convention.

Mr. COCHRAN. That is all you are allowed.

Mr. HARRY WHITE. I have not spoken once on the particular question now before the Convention. The delegate will understand that there was an amendment offered by the delegate from Venango, (Mr. Dodd,) adding mining companies, and when I spoke before it was on that question.

The PRESIDENT *pro tem*. The delegate from Indiana will proceed.

Mr. HARRY WHITE. Mr. President: I listened with interest and profit to the very able remarks of the distinguished delegate from Columbia (Mr. Buckalew) on this question, and I wish they could go to the mind and heart of every delegate in considering this matter. He presented to us, in a very able and comprehensive way, the propriety of retaining absolute control in the hands of the Legislature over the taxing power of the Commonwealth. If you pass this section you encroach upon that power which is so dear to the people, and so properly reposed in their immediate representatives, the taxing power.

I have been taken to task by the gentleman from Philadelphia (Mr. J. Price Wetherill) for some mistakes in my utterances as to the amount of revenue which this section will indirectly affect. I am not mistaken in that regard. It is very well known that we receive from corporations over three millions of dollars of revenue. I do not say that all that comes from the manufacturing interests of the Commonwealth. On the contrary, it does not; but I do say that if you pass this section you interfere with the revenue of the Commonwealth from that source to the amount of from half a million to a million of dollars; and how?

It is very well known that under the act of 1864, consolidated by the act of 1868, we imposed a tax upon coal, we imposed a tax upon capital stock, upon dividends, upon net earnings and income. These aggregate over a million dollars. Now, mark you, in the section under consideration it is proposed to change this method of taxation as to mining companies and manufacturing companies. Remember, this is a tax on every coal company in this Commonwealth; it is a tax on every corporation authorized to mine and carry coal in connection with its railroad privileges. The tax on coal alone, according to the Auditor General's report of last year, amounted to \$299,000; the tax upon corporation stocks amounted to \$1,300,000; the tax upon loans amounted to \$492,000; the tax upon net earnings and income amounted to \$348,000.

Now, Mr. President, by this section you affect the entire revenue as derived from coal, which is practically \$303,000. You affect at least one-half of that which arises from loans. That is the tax imposed upon the bonds which are issued by these corporations. That is at least \$200,000. There is at least half a million dollars gone at once. Then of the tax upon dividends, amounting to \$265,000, I submit that \$100,000 is derived from this source. Then of the tax upon net income, which amounted to \$348,000, at least \$100,000 of that is derived from this source.

It will be seen by the figures thus cursorily glanced at, that the adoption of this section will affect the revenues of the Commonwealth to the extent of nearly a million of dollars.

I submit then that we should not do that in this incautious and hasty manner. There is no desire in this Convention, certainly none on my part, to be hostile to the manufacturing interests or corporations of this Commonwealth; but I submit there ought to be some difference in the manner of taxing corporations and taxing individuals. Suppose the delegate from Philadelphia and myself are incorporated by an act of the Legislature; we are clothed with the franchises of the Commonwealth; we throw in our capital; we embark in our business; if we fail in our enterprise, our private fortunes are saved and we are only affected to the amount of the capital thus invested. But if we embark as individuals \$100,000 in the same enterprise and are unsuccessful, our creditors are not satisfied with taking the effects thus invested, but they come to our private es-

tates and sweep our homes and all away, thus making a difference in the manner of our investments. I submit that in view of the fact that a man in a corporate enterprise is protected in his private estate differently from the individual who goes into a mere partnership there should be some difference in the system of taxation, and our Commonwealth has regarded this difference; instead of our manufacturing interests languishing and dying, it is the pride and boast of every citizen of the Commonwealth that Pennsylvania has made strides in the direction of developing her material resources and manufacturing enterprises far beyond and above any one of her sister Commonwealths; and so wise in this respect has our system of taxation been regarded, that the great State of New York has looked with applause and approbation upon our system of taxation. I submit then in view of this *prima facie* case, in behalf of our revenue system, we should refuse in a summary manner to encroach upon it. If it is wrong, as the gentleman from Lycoming says it is; if it is unwise, as the gentleman from Allegheny says, go to the Legislature, go to the representatives of the people, and there by an act of Assembly change our system in this regard. I followed the wise teachings of the Savan from Philadelphia (Mr. Carey) upon all labor and industrial and commercial questions. In his able arguments upon the interest matter, I also followed him. I voted against putting a hard, fixed iron law in the Constitution—a clause fixing inexorably the rate of interest. He said, and I approved him, “go to the Legislature and let them change this when it is necessary.” So on this question of taxation, I say let us refuse to put it in the Constitution, but let us go to the Legislature and let them make the changes required.

There is one word more to be said upon this question. Recollect in corroboration of what the delegate from Columbia said, that when the three million loan was negotiated for the State in 1861, it became necessary in 1864 to raise a revenue to meet it. A tax was imposed upon the gross receipts of corporations, and in the act of Assembly providing for the payment of the three million loan by the collection of a tax on gross receipts it was provided that when the three millions were paid the tax on gross receipts would be removed. The Legislature last year, in obedience to their

promise, fulfilled that pledge. They removed the tax from gross receipts and it no longer exists. Do not remove this power from the Legislature, but let them from time to time have the power by the Constitution to make any alterations of our system of taxation the necessities of our industries and the times require.

MR. BROOMALL. I voted against the introduction of the word "mining" into this section yesterday, because I believe there are reasons why this provision should be extended to manufacturing corporations which do not operate with respect to mining companies. The reason that is stated on this floor as the great argument in favor of protecting manufacturing corporations against the Legislature, is that they can be driven out of the State, and every gentleman living in the border counties knows instances in which this has been done to a very great extent. All that has been explained on this floor. It was that which induced the Committee on Revenue, Taxation and Finance, more than anything else, to report in favor of protecting those corporations against the Legislature, and induced them, at the same time, to refuse to protect the mining corporations, which cannot be driven out of the State by taxation. They thought as far as the latter companies were concerned that they could be safely left to the Legislature. If this section is to be passed, as I hope it will, I trust that the vote by which the word "mining" was introduced will be reconsidered and that word be stricken out. But still I think that section ought to be passed, even with that in it, because these manufacturing companies ought to be protected against the Legislature.

It is not enough that the Legislature can exempt them from taxation except as individuals are taxed. They require more than that. They have no confidence in the Legislature. The power of taxation will prevent capital from coming into this Commonwealth from elsewhere and expending itself in the development of our resources. The gentleman who last took his seat (Mr. Harry White) says, "send these people to the Legislature." Why, that is just what they have been complaining of heretofore. He has alluded to the beneficent manner in which the Legislature last winter repealed the law imposing a tax upon the gross receipts of corporations. I am told by a delegate upon the floor, who is here to correct me if I make a mis-statement, that this benefi-

cent legislation which the gentleman from Indiana has spoken of so highly as being the result of a solemn compact made between the State and these people in 1884 cost these companies last winter \$50,000.

Now, I do not wonder that the Legislature wants to retain that power. It is a very nice thing, a very pretty operation. I do not believe that the Legislature got money, but I believe that the masters of the Legislature, those who control them and hold them and wind them around their fingers—the wire-pullers at Harrisburg—got it. I believe that, and it is not to be expected that they will give up the opportunity of repeating that operation about once in two or three years. "Who knows," these manufacturing companies will say, "but this tax will be re-imposed in the course of a year or two, to be wiped out again at the same expense." The gentleman from Indiana must remember that we are not all members of the Legislature. No body, no association, no community, no organization ever yet voluntarily gave up power, and he would of course object to giving up the power of taxation upon these corporations. But we do not all look upon the matter in the same light. He may be willing to trust his fellow legislators when we are not and these corporations are not, and I trust that this body will protect them against being trampled upon and driven out of the State by taxation.

MR. BARDSLEY. I trust that this section will remain as it is. There is no State, in all the United States, where it is so necessary and so important to foster manufacturing interests as in the State of Pennsylvania. There is no State among all the States of our Union where there are so few manufacturing companies as in the State of Pennsylvania. The members of this Convention know that the Eastern States are full and crowded with manufacturing corporations, and it simply arises from the fact that they are there fostered and protected by the Legislatures of the States in which they do their business. The legislation of the Eastern States all tends to their support, and under the wise legislation that has been passed in those commonwealths, these manufacturing industries have been builded up until they can compete with the world in the ability to manufacture commodities for the use of the people. Pennsylvania, with more wealth than any of the States, has less of these interests than any other; and it is

a very pertinent question, and a very important question, to ascertain why this fact exists. I know, sir, of my own knowledge that there are hundreds of thousands of dollars to-day kept out of this State because the men who have that capital say that we in Pennsylvania do not protect the manufacturing interest. The license given to the Legislature to impose taxes upon corporations has prevented, and is to-day preventing, capital from entering our State. It may not be owing so much to the law as it now exists, as to the fact that capital, sensitive at all times to all restrictions, is aware that the power to tax manufacturing companies exists in Pennsylvania. Manufacturing enterprises and manufacturing capital are of that character that many men who otherwise would gladly embrace the many opportunities of investment afforded in this Commonwealth do not now dare to invest their money with us.

Again, few men like to embark their entire fortunes in manufacturing enterprises, who are willing to invest a part, and those men should be protected to the extent that they invest as well as the man who invests his all; the aim is the same, the object the same, the desire is the same, and this Convention should prevent the legislative power from taxing corporations any more than individuals.

I trust that this interest, which is and ought to be one of our most important interests, will receive more protection and more consideration from this Convention; and in the furtherance of that desire I ask this Convention to adopt the section.

Mr. J. M. WETHERILL. Mr. President: The gentleman from Delaware (Mr. Broomall) proposes to strike out the amendment which was yesterday inserted upon the motion of the gentleman from Venango, (Mr. Dodd,) to apply the benefits of this section to mining as well as manufacturing companies.

Mr. BROOMALL. I did not make a motion to that effect. I could not make a motion, I simply suggested it.

Mr. J. M. WETHERILL. Very well. I did not say the gentleman made a motion. If the language suits him better, he made an argument in favor of striking out the word "mining" from the section, upon the grounds that mining companies, being necessarily confined exclusively to the State, do not require the same protection from the hands of the Legislature as do manufacturing companies, which are

sometimes placed upon the borders of the State and which can easily be transferred to another Commonwealth.

The same argument applies with equal force to mining companies. If the gentleman has studied, even to a limited extent, the geology of this State and its surrounding territory, he will find in our border States of Maryland, West Virginia and Ohio, large deposits of mineral wealth, of coal and of iron. If hostile legislation in the way of the taxation of mining companies is to be permitted by the Legislature, why will not these companies be forced out of the State into the adjoining States of Maryland, West Virginia and Ohio? If the gentleman's argument has force as applied to manufacturing companies, it has equal force in regard to mining companies, because the same restrictions that, if placed upon manufacturing companies, will drive them away from our midst, will cause a similar movement when applied to capital engaged in mining.

The gentleman from Indiana (Mr. Harry White) argues that it is just and proper to place a tax upon coal, stating that the statistics as exhibited by the report of the Auditor General show that the revenue derived from coal has amounted in the last year to nearly \$300,000. Upon what principle is it that a tax should be placed upon coal, which is a prime article of necessity, when the same tax is not placed upon wheat, which is an article of equally prime necessity? The coal is equally necessary in our domestic economy as is wheat, and why should a discrimination be made against coal as compared with other articles no less imperatively necessary? The real truth is that the entire system of taxation which discriminates against mining and manufacturing companies, simply because they are companies and not individuals, is unjust, and should be removed. I hope the word "mining" will be left in the section, and that as it now stands it will be passed.

Mr. H. W. SMITH. Mr. President: I do not desire to occupy the time of the Convention for more than a very few moments.

I regard this section as of great importance. It is an attempt, as I view it, to exempt corporations, or at least two classes of them—manufacturing and mining corporations—from taxation, except as individuals are to be taxed. This section is extremely well drawn. If united

wealth and incorporated power seek exemption from taxation and to be taxed no further than individuals are taxed in the same business and are to be taxed in the same manner, let them engage in such business without incorporated power, and let them do as individuals do, and not seek incorporated power, which is a great advantage in this country and in all others. It is nothing more than a special exemption; and if special legislation is to be done away with, I trust that this Convention will not grant a special exemption, an exemption from taxation, to a few classes of corporations.

Gentlemen have said that individuals of small means unite in corporations. Look at your mining and your manufacturing corporations; it is not men of small capital, it is large and united wealth that seek this incorporated power, and seek it as a great advantage over individuals. Why is it that they should be exempt.

This is the first attempt to place two classes of corporations above others; but the rest will follow. Put such a provision as that in your organic law, and it will only enable other corporations to present it to the Legislature and ask to be put upon the same footing, and thus placed over individuals. We ought to be careful; we ought to guard the rights of the citizens against this "incorporated" power. Look at your pamphlet laws that are passed annually, numbering from one thousand two hundred to one thousand five hundred pages, and it will be found that a large part of those laws are special laws for corporations. Some are general, to be sure, but all giving advantages to corporations. It is high time that some restriction should be placed upon this.

Now, if mining and manufacturing corporations desire that they should be taxed the same as individuals, why do they not unite together and carry on business the same as individuals do, without the advantage of incorporated power? It is folly to deny that corporations have no advantages. Why, sir, they are a serious evil; they are increasing day by day. A very able and upright judge, as much so as any judge who ever graced the judgment seat in this or any other country, foresaw the dangers of corporations, and incorporated power, more than fifty years ago; and then, when corporations compared with their present extent, were but few in number, he saw the danger, he anticipated and he foretold

many of the evils that are now in existence. I allude to the late Chief Justice Tilghman, as early as 1822; and allow me to say that there never was a judge upon the bench who said less out of the point to be considered than that able and upright judge. And yet, upon a mere question whether a legal notice or summons could be served upon an officer of the corporation, not a principal officer, he went into this matter, and he held this language:

"We have a great number of incorporated road and bridge companies, besides charitable and literary societies without end. Indeed corporations are multiplied and are multiplying to a degree which threatens serious evil."

That was the language held as early as the year 1822, by this able and upright judge. Look at things now. You have more legislation for corporations than you have for individuals; and here it is sought to put in the great organic law an exemption of two classes of corporations from taxation, which other corporations are bound to pay; and you are to tell the individual business men of Pennsylvania who engage in the same business with the two classes of corporations named in this section, that if these corporations are taxed—I say, great as their advantages may be, and great as their profits may be, and small as yours are, you must be taxed in the same way. I trust that this Convention never will agree to this section.

Mr. CALVIN. Mr. President: I desire to say just a word or two on this subject. This constitutional amendment is intended to affect merely mining and manufacturing companies, and no others. The State has a great interest in the development of our resources. This section only proposes that these corporations shall be taxed in the same manner, and at the same rate as individuals. Now, I can see no injustice in putting these corporations on the same basis as individuals. I would be utterly opposed to giving them any advantages over individuals, but when we take into consideration the great interest that the State has in the development of her resources, and in the diversification of the pursuits of her industry, I think it is but right and proper that we should put them on the same level. I think it is important to place in the Constitution a provision which shall say to capitalists, not only in our own State but in other States, that there shall be no discrimination on the subject of taxation against them if

they invest their capital in manufacturing and in the development of our immense mineral resources.

The first and the highest duty of government, it appears to me, is to protect the labor, to develop the resources of the country, to diversify its industry, and thereby to develop the almost infinitely various faculties and capacities of her people. Our State is full of immense mineral resources. We have manufacturing facilities of the highest character, and it is our duty to develop these resources and to diversify the pursuits of industry, and thereby develop the faculties and capacities of our people, and to furnish at the door of the farmer a market for his various products.

On the score of revenue, in reply to the remarks of the gentleman from Indiana, I would say that you will, by this section, greatly increase the subjects of taxation and the wealth of the State. Heretofore the capital of the State has gone out of it. Instead of attracting capital from adjoining States into this State, capital has gone, as has been stated here correctly, from this State to New Jersey, and elsewhere, just because of the refusal, in the first place, of the Legislature to pass the necessary acts of incorporation, and of the dread of this discriminating taxation against corporations.

It appears to me, therefore, that as a matter of public policy we should inscribe in our Constitution a prohibition against taxing these mining and manufacturing companies any higher than individuals. In that way we should invite capital to be invested in manufacturing and mining, and would immensely, in my judgment, promote the interests of the State.

Mr. AINEY. Mr. President: If I had not the section before me, listening to the argument that has been presented here by those who oppose it, I should infer that its object and purpose was to exempt all corporations from taxation wholly and entirely. If such were the purpose of the section or if such could be made out to be its effect, I should oppose it. Understanding it to be simply to put the men of small means in the same position as the rich men, I support it, and I do not rise to make any extended remarks; but I desire to call the attention of the venerable gentleman from Berks (Mr. H. W. Smith) to a fact that he has mis-stated.

He says that it is not the men of small means who will be benefited by this section, but the rich. I ask the gentleman if

he does not know that in his own county, in the small village of Topton, the men of moderate means, none of whom could start out in an iron enterprise or in a manufacturing enterprise by their own individual means, have combined and united their capital and are now building up important works which will benefit that locality and benefit the whole county? Does he not know that fact?

Mr. H. W. SMITH. The men engaged in that are wealthy.

Mr. AINEY. There are at least twenty-five or thirty men engaged in the village of Topton who have put in from five hundred dollars to one thousand dollars and two thousand dollars in that enterprise, and it was all they could spare to put into it, and it will be of great benefit to that locality.

In another town in the gentleman's county they are moving in the same direction. In the borough of Kutztown, they are endeavoring to start an establishment of that kind. In my own county, in the borough of Millerstown, they have recently organized, and individuals of small means have gone into the enterprise. As the laws now stand, as our statutes have proscribed manufacturing corporations, it has been virtually a prohibition against men of small means going into these enterprises. It has put a monopoly into the hands of rich men. A man of one hundred thousand dollars or two hundred thousand dollars or a half million of means does not ask any incorporated privileges. He starts out for himself individually, and he escapes all these taxes. Now, when a wealthy man starts out alongside of a dozen or two dozen men of moderate means engaged in the same kind of enterprise, the wealthy man escapes taxation and these men of moderate means engaged in the same business are overwhelmed with taxation.

I should like to have some gentleman who opposes this section tell us why this should be. Mr. President, it seems to me that this section does not go far enough. I do not understand that the section as it is now presented to us will exempt the capital of corporations from taxation. The property of corporations has always been taxed the same as that of individuals. Their business has been differently taxed. They have been taxed on their net earnings; they have been taxed on their gross income; they have been taxed on their dividends, and in a multitude of other ways. I believe, however,

that at the last session of the Legislature the gross injustice of this discrimination against men of small means who generally form these corporations was so apparent and so overwhelming to the legislative mind that they removed that disgrace from our statute books, but the capital of these corporations is taxable still, and it will remain so, even if this section is passed.

We have the decision of the United States Supreme Court upon a case which was taken up by the national banks on the question of whether the State could tax the capital of the banks for State purposes on the ground that the bonds which formed the basis of the bank and into which all the capital was invested being exempt from all local and State taxation, therefore the capital of the bank could not be taxed for State purposes. The Court held that while the capital of the bank was invested in bonds which were not taxable for purposes of taxation, the property of the bank, which was its bonds, was different from the capital, and the capital could be taxed notwithstanding, because that belonged to individuals. I apprehend that if this section should pass and become a part of our organic law, as I hope it will, the capital of corporations would still be taxable, and taxable differently from what the capital of individuals is taxed. It ought not to be. There is no justice in it, there is no sound policy in it. But the scope of this section would not prevent it. If this be true, if it be correct that the capital of corporations can still be taxed, ought you not by constitutional provision to prevent any Legislature from "bleeding" these corporations, from doing that very thing to prevent which perhaps more than any other thing this Convention has come together? We are here to take from the Legislature the power or the incentive to do corrupt and bad acts. If for any such purpose as that the Legislature should desire to tax the business of these corporations differently from that of individuals, ought we not to put in our Constitution a principle which will prevent it?

One word more, sir. I desire to see, at no distant day, and I hope we may all see it, the laboring men form a part of these great manufacturing corporations. The section introduced by the distinguished gentleman from Philadelphia (Mr. Carey) the other day, looking to that end, allowing companies to be formed with limited liability, I hope will bring about

that result; and when that day comes, I desire to see these corporations composed of the laboring men, of men of small means throughout this Commonwealth, placed on an equal footing with corporations composed of rich men. I hope, sir, this section will be passed.

Mr. BOWMAN. I do not rise for the purpose of making a speech on the question that we have now under consideration. I simply wish briefly to define my position. While I believe in the measure and would, were I a member of the Legislature, support a proposition of this kind, I cannot see my way clear to incorporate this section in the Constitution of our State, thereby depriving the taxing power, to wit, the Legislature, of the further exercise of the power to impose taxes upon corporations whenever the necessity may arise, when it shall become necessary to do so. Hence, I cannot vote to put this section into the fundamental law of the State, there to remain for long years to come, irrevocable; so when war, famine or other calamities overtake the people of our Commonwealth, the taxing power will be crippled, and when they go out upon the world for the purpose of borrowing money, they cannot borrow it safely and certainly as they did in 1861, and say, here is a source of revenue that we will pledge for the repayment of this loan. I think it would be unwise, impolitic and fraught with dangerous consequences. I would leave this power with the Legislature, where it properly belongs, and where, alone, it can be safely exercised.

Mr. BIGLER. I have but a few remarks to make on this subject, and they shall be mainly in reply to the remarks of the gentleman from Lehigh, (Mr. Ainey,) who makes it a matter of special complaint that the capital in organizations for purposes of mining and manufacturing should be subject to some kind of taxation. Now, sir, let us look at this question for a moment. I suppose that the agriculturists in this country are entitled to as much consideration as any other class of men. I suppose that agriculture is quite as essential to the welfare of the nation as any other pursuit. Let us suppose that the gentleman from Lehigh has \$10,000 and I have \$10,000. He chooses to put his \$10,000 into a manufacturing company. I choose to put mine into a farm. In all probability he will make ten dollars where I will make one; and yet he complains that he may have

taxes to pay. Surely I shall have to pay taxes on the farm, and this is a reason for taxing his capital in an organized company to make money.

Then, Mr. President, on a broader view, it always did seem to me that there was at least a slight difference between the natural man and the artificial creature. This being which we create by legislation we may approach with greater liberty than we approach the natural man. I do not mean to countenance the slightest idea of inequality or injustice; but I do countenance the idea of a larger measure of liberty in dealing with a corporation and its large profits, and especially where we deal with its profits and make exactions from its profits.

I object very decidedly to this section, and especially to the introduction of the word "manner," not only restricting taxation to the rate, which so far as individual property is concerned would be perfectly right, but providing that the manner shall be precisely the same. Suppose you reverse the proposition, and say that the individual citizen shall be taxed only in the same manner that you will tax a corporation, and make exactions from it.

Now, sir, I would not, in a matter of legislation, encourage the discrimination to the extent to which it has gone. I think it has been carried too far. I think it is the duty of the Legislature to discriminate rightly in this particular, to see that while it does ample justice to the coffers of the Commonwealth, it does not adopt a policy calculated to crush out manufacturing companies or manufacturing individuals. But, sir, to my mind it is utterly indefensible that you shall put into the Constitution of this State a provision of this kind. We had better trust it where it has been left heretofore, with the Legislature.

I cannot go over the whole ground without repeating the sound and conclusive views of the gentleman from Columbia, and it will be quite unnecessary for me to do that. I cannot present them with the force which he did, but they covered the whole of the argument and ought to be conclusive.

It is idle to talk about corporations not having advantages. They are subject to only a limited liability, whereas the individual citizen will be required to part with the last dollar to his debts. Exemption from liability is a valuable favor for which corporations should pay liberally.

For my own part I would allow them no such exemption.

Mr. HOWARD. Mr. President: I think this is a very important section. It is peculiarly proper that a section of this description should be incorporated in the Constitution of Pennsylvania; and the reason why it should be inserted in the Constitution is that the Legislature has heretofore discriminated against these special and particular Pennsylvania interests and driven some of them out of this Commonwealth by an unjust system of taxation.

I listened attentively to the argument of the gentleman from Indiana, (Mr. Harry White,) and also to the arguments of the gentleman from Clearfield, (Mr. Bigler,) who has just taken his seat, and a most singular argument it was. He says, "suppose the delegate from Lehigh should have \$10,000 and should put it into manufacturing business, and he, the delegate from Clearfield, should have \$10,000 and put it in a farm; then it is presumable that the delegate from Lehigh would make much more money in the manufacturing business than he would out of his farm, and then he asks why should he not pay more taxes?" Why, sir, he must pay more taxes if he has made more money. So there is nothing in the argument of the delegate from Clearfield. Under this section he must pay a tax upon the *property* and the *business* of the corporation and if he (Mr. Bigler) put his money into a business that did not pay so well, of course he would not pay so much taxes; but if the delegate from Lehigh was fortunate and made more money by putting his money in the manufacturing business, he would pay taxes just in proportion as his business was increased and the profits thereof. So that there is nothing at all in the argument of the gentleman from Clearfield on the agricultural side and the manufacturing side of the question, except that the whole argument is against him, and he did not state it right, but stated it all wrong and begged the whole question.

Mr. President, there is no reason for, but as Pennsylvanians every reason against, this business of discriminating against manufacturing companies. They are peculiarly a business for the Commonwealth of Pennsylvania, and I know from information perfectly reliable that very large companies have been driven from the State into other States because of this unjust discrimination in regard to

taxes. What reason can be assigned for it? I agree perfectly with the argument of the delegate from Lehigh. If a man is engaged in manufacturing any particular article, investing perhaps his three, or four, or five millions, why should he be taxed less than five or six men engaged in the same business under a charter of incorporation?

The delegate from Erie (Mr. Bowman) says that if you adopt this proposition, when trouble comes upon the Commonwealth, the power of the Legislature to tax will in some way be diminished. Not at all, sir. The power of the Legislature is in no way touched if trouble comes upon the Commonwealth. This section only provides for equal and exact justice upon a great Pennsylvania interest; that if the Commonwealth needs money and must resort to extraordinary taxation, she is to tax all alike—not all alike, perhaps—because this embraces but two classes of the corporations of the Commonwealth, the manufacturing and the mining companies.

Sir, as Pennsylvanians, sitting here to legislate for Pennsylvania, our legislation should certainly be in the interest of Pennsylvania. Surrounded as we are by the immense wealth of this Commonwealth that lies buried in our soil, we should encourage capital to go into the business of manufacturing and mining. These resources can be developed; they can be brought into the market, and Pennsylvania can be made one of the richest Commonwealths in the world.

Certainly every reason is in favor of the adoption of this section. Every sentiment of justice is in favor of it. The whole argument of the delegate from Indiana (Mr. Harry White) was merely this: If you do justice in taxing the manufacturing corporations the same as individuals, you will take away from the Commonwealth a certain amount of revenue that she now receives. What kind of an argument is that? That is just exactly what we intend to do. Why did not the delegate give some reason, some argument, for this discrimination against the manufacturing establishments of a great manufacturing State, whose special business is that of manufacturing and mining? To discriminate by our system of taxes against the great staple industries of the Commonwealth is a great mistake. There is no statesmanship or reason in it, in my judgment.

Mr. J. N. PURVIANCE. Mr. President: The revenue which the Commonwealth receives annually from the corporation tax upon manufacturing corporations amounts to a large sum, perhaps not less than \$600,000 to \$700,000. I state this fact to the Convention as important in the consideration of the question.

It is very questionable whether it is the policy of the State to tax this branch of enterprise and industry. But we should consider well whether it would not be a subject more properly for the action of the Legislature than for this Convention.

The expenses of the Senate in 1872 were..... \$171,845 01
The expenses of the House of Representatives in 1872 were 236,689 89

408,534 90

Public printing..... \$101,047 21

Twenty-five years ago the expense of the Senate and House was about \$100,000, and of printing about \$25,000. And it may be said that the expenses of all the departments of government bore about the same proportion. The increase has been so great that the people do and have a right to complain.

The annual income is now about seven millions, a sum far beyond the necessary wants of the government, economically administered.

The sooner taxation is reduced the better; and in no way can you more effectually bring about an honest administration of the government than by bringing the condition of the State Treasury to an amount to meet the proper and legitimate wants of the State. Anything beyond that begets extravagance and corruption. It leads to temptation to those in power, seldom resisted. Taxation should be uniform, and where all bear equally in proportion to their means of the expenses of the government, vigilance on the part of the people as to what is done with their money is the inevitable consequence. They watch and require their Representatives to give an account of the expenditure of their money, because it is raised from them.

I will here remark, Mr. President, that the expenses of this State have grown so enormously that the subject is attracting the general attention of the people throughout the whole State; and the burden would not be borne at all if it were not for the fact that the Legislature have from year to year selected out cer-

tain objects upon which to put the taxes so as to avoid the consequences which would result from their extravagant expenditures if they put them directly in a uniform scale all over the Commonwealth. If the taxes were raised in an ordinary way by some uniform system, you would not find the extravagance which now exists in the administration of our government. We now tax our manufacturing corporations to an extent, as I have stated it, of about \$700,000 a year. It is this selection of the industrial interests of the country and the placing of a specific tax upon them that brings into the treasury some \$700,000 every year.

In addition to that these manufacturing establishments also pay taxes upon their property as all other property is taxed. So long as you have class legislation of that character, by means of which you raise the revenue and by means of which you collect and bring into your treasury some seven millions of dollars every year, you may expect this corruption and extravagance to go on at Harrisburg. The single item of legislation costs \$480,000 a year now against only about \$75,000 to \$100,000 a few years ago.

These are enormous differences. The representatives of the people could not go to their constituents and justify any such expenditures if the taxes to meet them were raised in a uniform way throughout the Commonwealth. If our taxes were raised by means of each man having to contribute his share, the representative would in that case be called to account and he would have to answer to the people for his extravagance, which would incite the people to more vigilance. The whole revenue derived from all sources some years ago was only \$3,000,000. Now, as I have remarked, it is \$7,000,000. What becomes of this immense surplus? It is locked up in the treasury, and then those who have the means, who have the key, as it were, of that treasury in their pockets, unlock it and take out the money in some way or other.

We have Senators and Representatives in this body who for ten or twelve years have occupied seats in the Legislature. I ask them if any one of them all has ever been called to account when he has gone home from a legislative session, whether he has been asked at a public meeting of his constituents how all this great amount of money has been raised. The money is raised from corporations, from banks,

from manufacturing establishments, and from other sources, and the people do not feel that which is not assessed upon them by direct taxation, but which is paid indirectly by them. The Representative is never asked that question because no man of his constituents feels that he is directly paying a dollar of that tax. It is raised in an indirect manner, and the people do not feel it, and you will never have an honest government honestly administered, until the burdens of that government are brought directly home to the people and they feel them. Then whenever these burdens press upon them they will call their Representatives to account. In olden times the practice was that when a member of the Legislature returned home to his constituents, a county meeting was held and the member appeared at the meeting, where usually he was called on to give an account of his stewardship and to state what had been done at Harrisburg. Frequently he was asked how he had voted on every question and was held to strict accountability for his votes. Latterly, however, all this has gone by. The member returns to his constituents and is silent as to his whole course and has not a word of explanation to make concerning his action. The expenses of the government have been so arranged that the taxes are removed from the people. The people do not feel the taxes which are paid by the corporations, and because they do not directly feel the burdens of the government resting upon them, they ask no explanation of their representatives' conduct.

All this revenue of \$700,000 that is raised from the industrial enterprises of the people of this Commonwealth, under the name of tax upon manufacturing corporations, should not exist, and if I were a member of the Legislature I would urge and vote for its repeal because it is an unjust tax upon the enterprise, and industry, and the prosperity of the laboring men of this country. If you repeal it, what will be the effect? You will just take from those who have the power of appropriating and loaning moneys, from time to time, out of the Treasury of the Commonwealth, the temptation to do so, because the money is there.

I hope, therefore, that something will be done by this Convention by which unjust discriminations in taxation will no longer exist, and that just uniformity in taxation will be the rule.

Mr. MACCONNELL. Mr. President: An old adage says that "equality is equity," and the proposition commends itself to the instincts of every person. We have had some eloquent expressions upon this subject here this morning, which have had a convincing effect upon my own mind, and I have no doubt have had the same effect upon the minds of all the other members. Equality is equity, and we ought to shape our course here, so far as we are able to do it, so as to produce equality amongst all the people of this broad Commonwealth. There are different ways, however, of carrying this thing into practice. An anecdote with which I have no doubt you are all familiar sets forth one way of carrying it out. An Indian and a white man had gone out to hunt, and they had killed a turkey and a turkey-buzzard. When they came to divide them the white man said to the Indian: "Now, you take the turkey-buzzard and I will take the turkey; or, if you do not like that, I will take the turkey and you take the buzzard." The Indian said: "It seems very fair, but you never say turkey to me once." [Laughter.]

That is one mode of carrying out equality in practice. It does not approve itself to my mind, but it does seem to approve itself to the minds of those gentlemen who urge equality in regard to the taxation of corporations. "Put them on an equality with individuals," say they. I say so too. I say amen to that proposition. Let us put them on an equality with individuals; but let it be an actual equality, not a mere nominal one. We have, by a proposition which we have sanctioned and put into the Constitution, relieved the individual property of the stockholders of these corporations from liability for the debts of the corporations, whilst we have left common partners and individuals exposed to have their whole property swept away for the debts which they incur in business. Is not that a great advantage to the corporations? Is that putting them on an equality with individuals? Is it not raising them entirely above the individuals? Is it not giving them an advantage which will enable them to put their heels on the necks of individuals, when individuals come in competition with them? Who can say that it is not? The thing is too plain.

Now, to test the sincerity of this Convention, and to see how earnest the gentle-

men who are in favor of this section, and who talk so fluently about equality are in behalf of actual equality I propose to offer an amendment to be added to the section as it stands, in these words:

"And all the property of the stockholders of such corporations shall be liable for the debts of such corporations in the same manner as all the property of the members of any partnership is liable for the debts of such partnership."

Mr. HARRY WHITE. That is right.

Mr. MACCONNELL. That will put them on an equality. It will not be imposing any restriction upon corporations, and it will give individuals the same rights as corporations. I offer that to test the sincerity of the gentlemen favoring this section; and I will call the yeas and nays upon the amendment.

Mr. J. M. WETHERILL. I rise to a question of order. The amendment is not germane to the section. The section is upon the subject of taxation, and not liability.

The PRESIDENT *pro tem*. The Chair cannot sustain the point of order.

Mr. BROOMALL. I only have to say that if that provision is to be put into the section, we should also put in "franchises and capital." If we are going to make these corporations liable to the same extent as private firms, we should not tax their franchises and capital as the property of individuals is taxed.

Mr. ARMSTRONG. The gentleman from Allegheny presents this proposition not in good faith, to invite the confidence and action of this Convention to a proposition he deems to be wise, but he suggests it as one which he hopes will place this Convention in a false position.

Mr. MACCONNELL. No, sir; I deny the assertion!

Mr. ARMSTRONG. The gentleman may deny it, but he openly avows that the suggestion which he introduced here was simply for the purpose of testing the good faith of gentlemen upon this question. And he has not presumed to state to the Convention that he approves it himself, or that he would even vote for it, I would ask the gentleman if he does approve it.

Mr. MACCONNELL. I do approve of it, if this section is to pass.

Mr. ARMSTRONG. Yes, the gentleman approves of it with an "if," which means nothing. It is an amendment which he does not offer from conviction. It is a means by which he undertakes to defeat

a section of which he does not approve, without meeting the question fairly by argument based upon its merits. Why does not the gentleman say that these corporations shall be liable as partners under limited partnerships are liable? What is a corporation except a means by which individuals shall aggregate their capital for the purpose of accomplishing some public purposes? Whether they be great or small corporations, the aggregate effect on the community is to produce a large advance in the manufacturing and material interests of the country.

The amendment of the gentleman is an attack upon the fundamental principles upon which all corporate power rests. He forgets that we have authorized persons to organize themselves as corporations, with or without personal liability, and persons may thus incorporate themselves under that section with or without any general liability, and the credit of the company will largely depend upon the mode in which they are organized and the faith and credit which the people who deal with them place in the capability of the corporation to pay its indebtedness.

This proposition is simply a mode of striking down a section which the gentleman ingeniously attempts to oppose. It is not meeting the question fairly on its merits. He does not attempt to answer the suggestions that have been made on this floor that corporations in Pennsylvania require protection against taxation which is driving capital out of this State.

Let us come back to the merits of the question. Let us remember that the purpose in view is to invite capital into the State, to prevent millions of dollars going into Ohio and into New Jersey that ought to be retained or invested here, and to prevent the material resources of Pennsylvania from being taken across the border for the purpose of being there manufactured, in order to avoid the system of taxation in Pennsylvania which deprives us of our needed support and depresses enterprises that we ought to encourage.

This is not a fair way to argue this question. It is an attempt to put this Convention into a false position, and I trust the amendment will be voted down. Then let us come to the consideration of this question on its merits, and not upon the side issues of the gentleman from Allegheny.

Mr. MANN. It seems to me that the amendment offered by the gentleman from Allegheny is pertinent. It shows the absurdity and injustice of the section now under consideration more clearly than any argument that could be made. The very fact that the gentleman from Lycoming (Mr. Armstrong,) resists it so earnestly shows that there is point in the proposition offered by the gentleman from Allegheny. It shows that these corporations do derive very valuable privileges from the Commonwealth, over and above the advantages enjoyed by private individuals, and that therefore they ought to be taxed in a different way from individuals, otherwise there would be nothing in the amendment of the gentleman from Allegheny that would create all this anxiety upon the part of the advocates of the section. It does show most conclusively and emphatically the value of those privileges which those corporations receive from the Commonwealth. They are exempt from the liabilities of individuals and of partnerships and they have all these other privileges. Therefore it is but fair that the taxing power of the State should be able to reach them and require them to pay something for their privilege.

I submit that the amendment of the gentleman from Allegheny is the better and proper way of destroying the section under consideration. It is always resorted to by men of intelligence and of thought who see the injustice of any proposition the defeat of which is desired.

There is another feature not touched by the amendment, to which I ask the attention of delegates. They have been told once or twice, but I ask them again to consider if every argument made in favor of exempting manufacturing and mining corporations does not apply to every other corporation. If we are to have entire and exact equality and uniformity, why not say that all corporations instead of selecting two classes? We have charged the Legislature with being special in their privileges, and yet we are to incorporate into the Constitution of this State two of the most effective special privileges that can be adopted or thought of. This section, if adopted as it now stands, will say, "you shall not tax manufacturing and mining corporations differently from individuals," and thereby will say, "you may tax every other corporation in the State differently, thereby endorsing all the special privileges which the Legisla-

ture of Pennsylvania have ever granted, for that is what it means.

There is no lawyer here who will dare say that that is not the legal meaning of this section as it stands, that the prohibition to tax manufacturing and mining corporations differently from individuals is authority to tax all other corporations differently, and every argument made in favor of inserting these two is in favor of inserting all others.

If the section is amended in that way, if the Convention think that ought to be the policy of Pennsylvania, I will cheerfully yield to the judgment of the Convention, but to engraft on the Constitution of the State so unjust a discrimination as this, I believe, will array against it the thoughtful farming interest, and it ought to do it, for it is a discrimination against the farming interest.

There seems to be scarcely any voice raised here in favor of that interest. The gentleman from Philadelphia sneers at it even, and he brings up the free trade argument in answer to what I said, that if you put this tax on corporations it is but an indirect way of putting it on farmers. I have heard that kind of talk all my life from free traders, but I never heard such an argument before from a gentleman whom I suppose to be in favor of tariffs for raising revenue. I do not believe that argument myself, and I do not believe the gentleman would accept it if you applied it to a tariff. Why then should you apply it to raising revenue from corporations? The principle is the same in either case.

Now, sir, you talk about the hardships of imposing taxes on corporations. A tax is always a hardship, I suppose; but taxes must be collected. In Pennsylvania to-day if a farmer has but a thousand dollars and he purchases a farm for \$10,000 you require him to pay taxes on the whole value of the farm, \$10,000, and you authorize the vendee to insert in his mortgage that he shall also pay the tax upon the \$9,000 of debt. You do not propose to relieve the farmer from any of this injustice or hardship; but this morning there is an unusual degree of anxiety for corporations. One would think this Convention was turned into a body for the protection of corporations, listening to the arguments this morning. I do not comprehend it myself; and if I read the history of Pennsylvania a right, there is no excuse for it.

The manufacturing interest of Pennsylvania is increasing faster to-day than the manufacturing interest of any other State in the Union, and this city in which we now have our Hall has already become the greatest manufacturing city on the continent, and it is increasing with rapid strides under our present laws. There is in the district represented by the gentleman from Delaware, a little town upon the Delaware that is already the greatest ship manufacturing city of any in the Union, and it is increasing with great rapidity. The manufacturers are making more money to-day by five-fold than the farming interest of the State. Why, then, this sympathy for the manufacturing interest, especially over the farming? I cannot comprehend it.

In addition this section is liable to the objection that has been made to a great many others, that it is legislation, peculiarly, emphatically legislation, and legislation of the most dangerous kind. You cannot afford to put this section into the Constitution of Pennsylvania.

Mr. AINEY. I desire to ask the gentleman a question.

Mr. MANN. In half a minute.

I take it there is no gentleman here who will undertake to say that this section is not legislation. You have said in the first section all that need be said, all that ought to be said in this article, in relation to taxation.

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

"All taxes shall be uniform." What more shall you say? Then you want to say in the fourth section that they shall not be uniform! The fourth section contradicts positively the first section; and whereas you said at the commencement of the article taxes shall be uniform, you say in the fourth section that they need not be! I repeat you cannot afford to put such a contradiction into the organic law.

Mr. MacConnell and Mr. Porter called for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call.

Mr. PURMAN. Mr. President—

THE PRESIDENT *pro tem*. The yeas and nays have been called for.

Mr. PURMAN. I was only going to say that I shall vote against the section and for the amendment. I am for voting down the whole thing.

The question was taken by yeas and nays, with the following result :

YEAS.

Messrs. Andrews, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Church, Corson, Cronmiller, De France, Dodd, Finney, Gibson, Gilpin, Harvey, Hazzard, Hemphill, Horton, Lawrence, MacConnell, M'Camant, M'Clean, M'Murray, Mann, Mantor, Mitchell, Patterson, T. H. B., Porter, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Turrell, White, Harry, White, J. W. F., Worrell and Wright—46.

NAYS.

Messrs. Achenbach, Addicks, Alricks, Armstrong, Baer, Bardsley, Broomall, Brown, Buckalew, Calvin, Campbell, Carey, Carter, Clark, Cochran, Corbett, Curry, Curtin, Dallas, Darlington, Davis, Dunning, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Funck, Guthrie, Hall, Hanna, Hay, Heverin, Howard, Hunsicker, Kaine, Knight, Lear, Lilly, Long, M'Culloch, Minor, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Read, John R., Reed, Andrew, Runk, Stanton, Struthers, Walker, Wetherill, Jno. Price, Wetherill, J. M., Wherry and Woodward—59.

So the amendment was rejected.

ABSENT.—Messrs. Ainey, Baker, Barclay, Bartholomew, Beebe, Brodhead, Bullitt, Cassidy, Collins, Craig, Cuyler, Green, Lamberton, Landis, Littleton, MacVeagh, Metzger, Mott, Newlin, Parsons, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N. and Meredith, *President*—28.

The *PRESIDENT pro tem.* The question recurs on the section.

MR. STRUTHERS. I wish to say but a few words on this subject. I hope this section as it stands now may be passed, and I think the reasons are very strong and decided why it should pass. We have provided in the article on corporations for the creation and organization of corporations. The disposition of the Convention seems to have been to carry that out, to give liberal privileges to corporations, or rather to give liberal privileges to all the people to assume and enjoy corporate privileges for manufacturing and other purposes.

Now, why should we cut all that down immediately by loading it with a system of taxation which will destroy and drive out capital, which has driven out of the State already large amounts of capital and is constantly doing it, and which is driving many of those corporations that have heretofore engaged in business to the necessity of winding up their business. They find themselves, under the force and power of an undue and unequal taxation, put upon them under this system, driven out of business, and some of them by reason of it are driven into bankruptcy.

Now, sir, it appears to me that in this matter of taxation, equality is the great matter to be looked at, and that is what we are providing for by this section, and not as to the terms and conditions upon which corporations shall be erected or created. Gentlemen contend here that it is necessary to retain power in the hands of the Legislature, that they may regulate this matter as they deem proper from time to time. Let us consider for a moment how the Legislature have exercised that power. How have they exercised the power in years past? There was a time within my memory and within yours when the whole property of the State was made equally liable for taxation for the support of the government, when the real estate of the country, the personal property of the country, all its property was made equally liable in proportion to its value for the support of the government.

Under this system of legislation which these gentlemen who have been *habitues* of the Legislature and who have been there manipulating for years have secured, they have on the idea of securing to themselves popularity and re-election, managed to release two-thirds of the whole property of the State from many of its responsibilities. The great value of the State consists in the real estate of the Commonwealth which is entirely relieved now under this system of one-sided legislation from the burdens of the State. They have to pay their county, their school, and their borough taxes, and all that, it is true; but the corporations have paid the same thing and in addition to that, corporations have to assume and bear the whole burdens of the Commonwealth. Where is the injustice, where is the equality of that? Why is it proper and necessary to encourage on the one hand the erection and formation of

corporations for the purposes of developing the State, and on the other hand to turn right around and cutting them down in this way? You induce men in the first place to put their capital in and undertake these manufacturing and other enterprises, and at the same time follow it up by a measure which will cut down and destroy them, which will either deprive them from going in altogether and thereby render your enactment on that subject nugatory, or after they have gone in and gone in under a delusion, to be cut down and destroyed by this one-sided taxation piling, placing upon them the whole burdens of the State to the relief of two-thirds or more of the whole value of the property of the State.

Now, sir, gentlemen contend that the farmers, the agricultural population desire this. That I contend is not true. The farmers are able to bear their share of the burdens. They are willing and desirous of doing it honestly and fairly. As was said by the gentleman from Butler, (Mr. J. N. Purviance,) this will induce them to call to account their representatives when they return home from their labor at Harrisburg, and until then we shall never have a fair, honest and pure discharge of the duties of those you send to Harrisburg, and when you come to that, it will be all right.

I remember very well when the tax on real estate was three mills. It was reduced from time to time. I remember very well when the first reduction of that was made. I remember very well when it was reduced to two mills, and still lower from time to time, and finally taken off altogether. Not a farmer in the whole State sent in a petition asking the Legislature for the purpose of court-ing popularity, as they supposed they for it. It was done merely by members of would do by it and secure their return; and in order to enable them to carry on affairs of the State, whilst they in that way catered to public sentiment with a view to secure popularity to themselves and votes, they piled up the burdens upon the corporations and other interest in the State.

I not wish to occupy more time on this subject, but I think it a very important one, one that we ought not to pass over lightly, one that has been well discussed; and I hope the section as it now stands will pass.

Mr. PURMAN. Mr. President: I desire to correct a misapprehension as to

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what I said when I was on the floor before the last vote was taken on the amendment, or rather as to what I intended to say. I suppose I stated that we ought to vote the amendment down, and then vote down the whole section. I intended to say we ought to vote the amendment in, and then vote down the whole section as amended. I desire to see the section voted down, and I voted for the amendment with that view.

The PRESIDENT *pro tem*. The question is on the section.

Mr. EDWARDS. I ask for the yeas and nays.

Mr. HEMPHILL. I second the call.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Addicks, Ainey, Armstrong, Baer, Bardsley, Boyd, Broomall, Calvin, Carey, Carter, Cochran, Corson, Curry, Curtin, Cuyler, Darlington, Davis, Dodd, Edwards, Elliott, Ellis, Ewing, Fell, Finney, Greene, Guthrie, Hanna, Hazzard, Howard, Knight, Niles, Purviance, John N., Stanton, Struthers, Walker, Wetherill, J. M., Wetherill, Jno. Price and Wright—33.

N A Y S .

Messrs. Achenbach, Alricks, Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Chas. A., Black, J. S., Bowman, Brown, Buckalew, Campbell, Church, Clark, Corbett, Cronmiller, Dallas, De France, Dunning, Fulton, Funck, Gibson, Gilpin, Harvey, Hay, Hemphill, Heverin, Horton, Hunsicker, Kaine, Lawrence, Lilly, Littleton, Long, MacConnell, M'Camant, M'Clellan, M'Culloch, M'Murray, Mann, Mantor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pugh, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Stewart, Temple, Turrell, Wherry, White, Harry, White, J. W. F., Woodward and Worrell—71.

So the section was not agreed to.

ABSENT.—Messrs. Baker, Barclay, Bartholomew, Beebe, Brodhead, Bullitt, Cassidy, Collins, Craig, Hall, Lamberton, Landis, Lear, MacVeagh, Metzger, Minor, Newlin, Parsons, Sharpe, Simpson, Smith, Wm. H., Van Read, White, David N. and Meredith, *President*—24.

The PRESIDENT *pro tem*. The next section will be read.

The CLERK read as follows:

SECTION 5. No debt shall be created by or on behalf of the State except to supply casual deficiencies of revenue, or to repel invasion, suppress insurrection, or defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate at any one time \$1,000,000.

Mr. BROOMALL. I can only say that this is in the present Constitution, except that \$750,000 in the present Constitution is raised to \$1,000,000.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 6. All laws authorizing the borrowing of money by and on behalf of the State shall specify the purpose for which the money is intended; and the money so borrowed shall be used for the purpose specified, and no other.

Mr. BROOMALL. That is also in the present Constitution.

The section was agreed to.

Mr. KNIGHT. I offer the following amendment as a new section:

"In the absence of special contracts, the legal rates of interest and discount shall be seven per centum per annum; but special contracts for higher rates, not exceeding ten per centum per annum, shall be lawful."

Mr. President, this section 'somewhat differs from that previously offered to the Convention in committee of the whole. It is a modification so far as relates to the usury laws, limiting their application to cases where the interest is more than ten per centum per annum.

Some say this section should not be in the Constitution. We have already passed an article which says that the Legislature shall not pass any special law fixing the rate of interest. Now, if we pass this section, then the Legislature may enact a law, fixing the penalty for a violation of it. I contend that we want a fixed, positive rate of interest in this State, and I doubt whether it can be obtained except through constitutional amendment.

Governor Hartranft recommended a change in the laws in regard to the rate of interest in his last message, but no action was taken upon it by the Legislature.

Thirty-two States in this Union have now a rate of interest different from that of Pennsylvania, all of them higher,

either by a repeal of the usury laws or else by an advance of the legal rate of interest. We see them drifting in that direction every day. I picked up a paper this morning, and I find that in 1872 Connecticut limited interest to six per centum, and taxes, insurance, and discount might be lawfully reserved. I find by the "*Ledger*" of this morning that the House also passed the usury law previously passed by the Senate, making the legal rate of interest in the State of Connecticut seven per cent. There were thirty-one before; here is another.

Now, I contend that we cannot afford to have our rate of interest restricted as at present in the State of Pennsylvania, for various reasons. Capital is leaving us and finding a better investment elsewhere. Only recently I had a conversation with a distinguished gentleman of New Jersey, the Speaker of the Senate, Mr. Bettle, on this subject. Formerly in that State the legal rate of interest was six per cent., and a violation of the usury laws caused a forfeiture not only of the interest above six per cent., but the principal also. I inquired from him, "Why did you make the change?" He replied, "We were forced to do it by the changes in other States, which were more liberal." I then asked him why they made the change increasing the rate of interest to seven per cent. He said that money was leaving the State and finding a better market, that it was going to New York and other places, and they were becoming bankrupt in their State. I then further inquired, "What has been the effect of raising your rate of interest to seven per cent.?" His reply was, "We are now draining Pennsylvania; money is coming into our State, and you see prosperity all around from that very cause."

Some may argue that this will be an unpopular section to be placed in the fundamental law. If a majority of the members of the Convention or even forty-five of them believe that to be the case, they have a remedy by requiring it to be submitted to a separate vote, as they can do with any article proposed by the Convention.

I know that the Legislature may pass a law fixing the rate of interest in accordance with this section; but the people want stability; they want a fixed rate of interest that they can depend upon, so that they may make their calculations with certainty and not have them ruined or upset at the next meeting of the Leg-

islature. That is one of the reasons why I am contending to have it fixed by this body in the Constitution.

Why, sir, merchants in foreign countries, and particularly in the island of Cuba, doing business with Philadelphia merchants, the very instant their balances become due order them away from the city of Philadelphia to New York, where they can get a better rate of interest. Hundreds of thousands of dollars are so ordered away every year. I state this because I know it to be so.

The government rate of interest to-day, so far as they are able to fix it, is seven per cent. The law declares that any banking institution shall charge the rate of interest that is legal in the State or territory in which it is located, and where there is no fixed legal rate of interest in the State or territory, then the rate to be charged is seven per cent.

Why should Pennsylvania hold out against the proposed change when it is acknowledged by thirty-two out of the thirty-nine States, and by the government of the United States itself, and ask that we should remain as we did in the olden times. Sir, theory may have been very well in the past, but theory will not do in the present. Forty years ago we had not our railroads, telegraphs and steamship lines, and the great financial enterprises of the State which we have at present. We are dealing freely in all other articles, but we are restricted so far as to degrade the great motive power of business, which is capital.

Sir, we know that bread is the staff of life and that money is the life of trade. Both are essential to the happiness and prosperity of the community. Let me ask gentlemen of this Convention, in case we have a law in force to-day that the legal price of a loaf of bread in this city north of Market street should be seven cents and the legal price of a loaf of bread south of Market street should be six cents, where would the bakers take their loaves of bread? Would they not all go north of Market street, where they can get seven cents a loaf? Certainly they would. What would the people do south of Market street for bread? Would they starve? No, sir; but they would do just exactly as we are doing to-day; they would pay for ten loaves and receive eight. That is what we are doing to-day in regard to money, and that is what I am contending against. I say the people are not educated up to understand the cost of this sac-

rifice of principle. They are making these heavy discounts all the time rather than pay the price that money is worth in other places. We are paying a higher rate of interest in the city of Philadelphia and State of Pennsylvania to-day, in my judgment, than they are paying in any other city or State in the United States. I believe really that to be the case. We are paying it indirectly; they do not see it; they do not know it; but it is so.

It reminds me very much of a story that I once heard of a sea captain who every time he came home put on a new suit of clothes. He met another captain who was going out at the same wages and who said he could not afford to do so. The latter said to the former: "How do you manage to put on a new suit of clothes for every voyage?" "Oh," said he, "my owners allow it to me every time." He was asked: "Do they make no objection to it?" and he replied, "Oh, no, not in the least." When the captain to whom this was told came home from his voyage, he rendered his bill and put in "for a new suit of clothes, forty dollars." The merchant inspected the account and said to the captain, "This bill is all right, except that I did not bargain to give you a new suit of clothes." "Well," said he, "other captains get it." The merchant replied, "No captains that I employ get it; you will have to strike it out." Soon after he met the captain who got a new suit of clothes every trip, and told him about the circumstances. "Oh," said he, "I do not fix it in that way; I put it in the bill as pork, beef, cabbage, &c." [Laughter.] The next time the other captain came home he had a new suit of clothes in the bill, but the merchant did not see it. The merchant looked at the bill and said: "Captain, this is all right; no suit of clothes here;" and turning to his clerk, ordered him to settle the bill. "Oh, yes," said the captain, "there is a suit of clothes there, but you don't see it."

That is our case to-day precisely. We are selling our money at ninety and eighty-five and eighty cents on the hundred, and do not get value for it. If we should raise our rate of interest and when we borrow a dollar get a dollar, then we should know exactly what we had to pay; and unless we do that we must remain in the crippled condition that we are in to-day.

My time being limited, Mr. President, I feel that it is not proper that I should

continue my remarks further on this subject.

MR. WOODWARD. I wish to ask the gentleman a question. I understand that on Third street almost any day in the year, good paper is sold at a discount at the rate of ten, twelve, fifteen, or eighteen per cent. per annum. Now, I want the gentleman to explain to me how that is a consequence of our present legal rate of interest and how that state of things is going to be avoided by increasing the rate of interest.

MR. KNIGHT. My explanation would be this: That if we should increase our legal rate of interest, capital would flow into the city; but now having our rate of interest lower than in other places where equal security is offered capital goes away from us, and when we want to borrow money we have to pay more for it in consequence of its not being abundant to loan.

MR. WOODWARD. The fact is that capital is here now to lend at exorbitant rates. How are you going to rectify that state of things by raising the rate of interest?

MR. KNIGHT. My impression is that if we had this law we should scarcely ever reach seven per cent., because it does not require a man to get seven per cent.; he can loan his money at two, three, four five or six per cent., and that would be legal. I think there would be so much money to loan that the rate would very seldom go above seven per cent., and perhaps not once in five years go above the limit fixed, of ten per cent. Now the very instant that you go above six per cent. you are violating the law. Many men in order to indemnify themselves for the risks of this violation of law, seek to get all they can for their money, while others who are not willing to take any risks whatever, who are conscientious and desire to obey the law, send their money to other places where they can get a higher legal rate.

MR. President, since the previous action on this subject, the publisher of Jeremy Bentham's works, has sent me a copy of them, and I will read from them a short extract. Mr. Bentham says:

"In a word, the proposition I have been accustomed to lay down to myself on this subject is the following one, viz: That no man of ripe years and sound mind, acting freely and with his eyes open, ought to be hindered with a view to his advantage from making such bargain in the way of obtaining money as he thinks

fit; nor, what is a necessary consequence, anybody hindered from supplying him upon any terms he thinks proper to accede to."

These are my views.

MR. DUNNING. Mr. President: This question has been before the Convention hitherto, and it has been before the people of the State. It has been in the Legislature. It has been before every State in this Union, and it is a question that addresses itself to every business mind in the land throughout this country; and it comes to us to-day in a shape for us to settle, and it is, in my judgment, a question of moral honesty.

It is a question whether we will continue or perpetuate what has been a fraud upon the statute book of this Commonwealth for a number of years, or whether we will place ourselves fairly in a position to act honestly with ourselves and with business interests.

Now, sir, there is not an individual, I take it, in this Convention to-day who has ever felt the need of money and been compelled to go into the market and procure it, but what would violate the law as it exists in this Commonwealth to-day. That is a pretty commentary upon the statute law. I do not believe there is a man in this Convention, not a delegate, however honorable he may be, who, it need be that he must raise money to protect himself and his interests, would not violate the statutes that exist!

Now, sir, are we to perpetuate this state of things, or will we do as other States do, avail ourselves of the best business interests within our reach? It was well said by my friend from Philadelphia (Mr. Knight) when this proposition was under discussion before, that the only reason we sustained ourselves as a State was because of the great and varied interests that we possessed over and above other Commonwealths.

Now, sir, is there any good reason, when compelled to procure money, why we should not have the advantages that citizens of other States have? Is there any good reason why the money of this State should not be kept within its own borders? Shall we persist in driving it out? Mr. President, we are dealing with the present, and not with the past. We are dealing with facts that present themselves to us to-day. We know what legislative action has been heretofore on this question. Gentlemen here do not forget the effort that was made last winter

to do away with the usury laws, nor do they forget the manner in which it was voted down, as it forever will be in the Legislature. Let us place it in our fundamental law, so that we shall at least be on an equal footing with our neighbors.

Mr. BIDDLE. Mr. President: I am opposed to the introduction of this section into the present article, or anywhere in the Constitution. I do not propose to go over the whole ground, because if any subject before this Convention has been fully discussed, it has been this very subject; and, in addition, we have had the debates published in a separate pamphlet for the use of members. I am one of those who believe that the traffic in money should be like the traffic in anything else, untrammelled; and it is just for that very reason that I think it unwise in the last degree to place in the fundamental written law of the State a limitation of the rate at which money may be lent and borrowed. With what propriety can my very excellent friend from Philadelphia who spoke last but one (Mr. Knight) talk of the necessity of educating the people upon this point of primary importance, when he is willing to take from the Legislature the right to change and fix this subject and place it in a shape in which, no matter what the exigencies of the community may be in the future, it must perforce remain unchanged.

How do gentlemen know here to-day that seven per cent. is to be the proper rate of interest for all time to come, or for the twenty or thirty years which you may suppose this Constitution may last? What is the use of talking of bringing ourselves in accord with the legislation of other States in this respect when you know that in regard to some of those very States touching on our borders the rate varies. I have learned that in Ohio the rate of interest is eight per cent. What it is in West Virginia I do not know. What it is in Maryland I do not know. In New York and New Jersey it is seven per cent. Why choose seven? My objection is that you are perpetuating an error by fixing it in the Constitution. There are some subjects which of necessity you must leave to the action of the people through their representatives, and this is one. Feeling as I do a deep conviction that it is unwise to legislate at all upon the subject, yet I would not force my individual convictions down the throats of the people against their wishes and feelings. That, in my humble judgment, is not the way to

educate them. That is the way to fix and perpetuate error, because people will not receive what is forced down their throats at the point of the bayonet.

Gentlemen forget that there has been an advance, and a very great advance, on this important subject by legislative enactment. Until some fifteen years ago there was a penalty affixed as to him who lent at a greater rate than six per cent.—the legal rate. An informer might recover double the amount of the loan, one-half to go to the State, and the other to be pocketed by himself. But some ten or fifteen years ago we modified this by legislation, and we now say (and it is a very considerable advance in the right direction) that no penalty at all shall be recovered for the taking of usurious interest, the only forfeiture being the excess above six per cent., which, if I recollect aright, must be sued for within one year. [A delegate remarked, "six months."] Six months, somebody says. That is still better. This is a very great gain, and my word for it, if the arguments are, as I believe they are, in favor of unfettered traffic in this article, the representatives of the people will ultimately place themselves in harmony with the laws of trade. But do not, in the name of all that is reasonable, in the name of all the arguments that have been put forward on the side which my friend from Philadelphia (Mr. Knight) advocates, tell us in advance in the very perpetuation of what is wrong in principle that the rate of interest must be seven per cent. or shall not be below that, except in regard to contracts where no rate is fixed, and thus instruct the people from the very source to which they have a right to look for soundness of view in this respect, that it is right to lay down an iron rule on this subject. For my part, I cannot imagine anything more utterly indefensible; and while I do not adopt the reasoning of my friend from Philadelphia, (Mr. Carey,) who addressed me some six or eight weeks ago on this subject, I heartily concur with him in the result which he has reached, and I hope this section will be voted down.

Mr. MOTT. Mr. President: I have listened with a great deal of attention to all the arguments that have been made on this section, and I desire to say a few words in reference to my own section of the State. I know the practical workings of the present law in relation to interest and usury there. I represent a district which is bordered by the State of

New Jersey and the State of New York for some eighty or ninety miles. In my little county every dollar of surplus earnings of our people goes to the State of New York or the State of New Jersey for investment, and whenever the estate of any man is inventoried we find that the surplus is invested, whether of \$30,000, \$50,000 or \$100,000, in New Jersey or New York. We are obliged to go to those States to get our discounts, and we have to pay our seven per cent. for them, and if we cannot get them there we must sell to our own shavers at from ten to fifteen per cent. for as good paper as circulates.

Sir, I believe in the principle of supply and demand. It does and will, in spite of all restrictive laws, govern prices as well in our circulating medium as in commodities. Under the circumstances, as they now exist in the border counties of the State, we cannot keep a dollar of surplus earnings there unless we conform to the regulations of other States. I could give numerous instances which have come within my knowledge in the last few months in corroboration of the statement that I have made. We are placed in just the position that I have stated, and unless we can get some legislation in this behalf we cannot transact the necessary business or make the improvements that would otherwise be made in our own State for the very reason that our capital is driven away by the laws of Pennsylvania as they now exist.

Sir, how can it be otherwise? Look at this subject for a moment. Our moneys at interest, in the first place, are taxed for local purposes. Every dollar that a man has at interest is taxed. There is no dodging it. The full value of it is taxed, and that taxation in my own town amounts to two per cent. of the six per cent. that we are entitled to receive, and in one township of my county the local taxation amounts to over five per cent. Sir, who is going to invest his money under such circumstances in this State?

Again, sir, when men have made up their minds that they have worked long enough and have made a competency and can live on the income of their earnings, what do they do? What other inducement is there for them to leave the State and take what they have gained in the State into the State of New York or the State of New Jersey, and build up the interests of those States as against the interest of Pennsylvania? It is this: That when they die, as much will be taken in

this State by the collateral inheritance tax as would support and educate a young son.

Sir, I declare here that the usury laws of Pennsylvania are a disgrace to civilization. You say to a man: "Yes, you may agree in writing to pay ten per cent. for the use of money and the next day you may sue to recover that amount, thus violating your own contract in writing." Such are the inducements held up by your law to men to act as rascals. I hope that this proposition of my friend from Philadelphia (Mr. Knight) will prevail, notwithstanding my distinguished legal friend from Philadelphia (Mr. Biddle) says that the Legislature ought to fix this thing. I do not know how he voted the other day; but we tried it once in a somewhat different form and failed. Now I hope the proposition will carry.

Mr. BOWMAN. I do not rise, Mr. President, to prolong the discussion of the question, but, on the contrary, I rise for the purpose of shortening it if possible. [Laughter.] If there has been any one question presented to the consideration of the members of this Convention that has received full and ample discussion, it is this question. While I should like to agree with the gentleman from Philadelphia (Mr. Knight) on every proposition that he presents to the consideration of this Convention, I certainly cannot agree with him in this. I think the minds of delegates have been made up on this question for weeks past. The gentleman however is mistaken in one thing. He tells us that Governor Hartranft called the attention of the Legislature last winter to the propriety of changing the law regulating the rate of interest in this State and that no action was taken by the Legislature on the subject. In that the gentleman is certainly mistaken. The Legislature had this question before them for two months, discussed it elaborately, fully, thoroughly and completely, and after a full interchange of sentiment with their constituents took a final vote upon the question and defeated it overwhelmingly. That is a part of the history of the legislation of last winter.

Now, sir, I think that we ought to come to a vote on this question. While I should be glad to hear all the gentlemen who have not spoken on this question heretofore in committee of the whole, I did hear a great many who did speak. I occupied no time of the Convention on this question myself, nor do I propose to do so

now, yet I will agree to do this, if they will postpone the discussion until next January, I will come back here then and hear them all.

In conclusion I wish to refer gentlemen of the Convention to one short paragraph that I find in a morning paper lying before me, as follows:

"COLUMBUS, OHIO, June 24.—In the Constitutional Convention this afternoon a proposition to so amend the Constitution as to prohibit the Legislature from passing any usury law was indefinitely postponed."

And I hope this will be disposed of in the same way, and so far as the action of this Convention is concerned, finally and forever.

MR. STANTON. Mr. President: The rate of interest should at all times be calculated from a business point of view, and not from a speculative one. Viewed in the former light, interest is simply a compensation which the borrower pays to the lender, and the rate should be regulated so as to avoid the exaction of usury by the State.

To continue the present rate of interest, six per cent., in this great and growing State is to retard its progress in improvement, and withdraw a vast amount of foreign capital now invested, the use of which is so essential to its interest. Perhaps there is no other State in the Union that requires her legal rate of interest changed more than that of our own; for our capitalists are seeking investments in other States at higher rates than can be obtained here, and foreigners of course will follow their example.

It has been said that the organic law of the land should restrict the rate of interest to six per cent. I cannot see the philosophy of this, inasmuch as the growth of our State must naturally place money in the light of commodity, and regulate itself by supply and demand. States that have none or very few of the advantages we have, fixed their rate of interest at seven and eight per cent. To continue the old rate of interest in Pennsylvania is to limit our money operations by not allowing it to regulate itself by supply and demand.

Our merchants find use for all their capital, and, with few exceptions, employ it in their business. Where there is capital, and those who supply it are satisfied with the interest for their money, the poor will always find employment. In countries possessing great wealth, we see

great works undertaken. Railroads cut through hills, canals uniting rivers, bridges, splendid edifices for depot purposes, and a variety of other enterprises which give work to thousands, independently of the usual employment of men and capital in agriculture, manufacture and trade. What has made our State second to none in the Union? Capital! This capital must remain with us; it must not be withdrawn; hence it is for us to resist all attempts to retain a law on our statute books which will drive this capital away. A reasonable rate of interest is all that is asked. It is in order that the rich man may employ his capital, for in a secure and free government there can be no risk, and that is one reason foreigners are so anxious to invest money with us. If seven per cent. be made the "organic law" of our State, we shall have more applicants for investments than we can accommodate. Demand for labor will naturally follow, and industry will crown a people's labor with a "golden harvest."

MR. PATTON. Mr. President: I am decidedly in favor of this new section offered by the distinguished gentleman from Philadelphia, (Mr. Knight,) and I hope it will be accepted by the Convention and become a part of the organic law of the Commonwealth. Then, sir, capital will return to the State and that which is here will remain, and prosperity will attend the commercial interests of the old Commonwealth.

MR. CAREY. Yesterday the Convention declined to do anything whatsoever in aid of the seventy thousand vagrant children that we are told are to be found within the limits of the State; it declined to do anything whatsoever in aid of industrial schools; and why? Because it might impose a tax of half a million or a million of dollars on this great State. To-day we are invited to impose upon the houses, and lots, and lands, and labor of the State a tax of twenty or thirty millions of dollars; the proceeds of which are not to be applied to the building of school houses or the education of vagrants, but to filling the pockets of the already rich, and to increasing the distance between the rich and the poor; to enable the rich to build new palaces or enlarge old ones in close vicinity perhaps to the asylums for the new vagrants that are to be created!

My friend upon my left (Mr. Knight) tells us that money is to be made cheaper by this. I have no doubt in the world he believes it. I am sure he would not say

a word which he did not believe; but I know it is not true. It is, however, of very small importance what he thinks, or what I think. What we need to know is what the people think. What do the hundreds of thousands of small proprietors who are paying interest to-day, the small traders who are paying interest to-day, the bone and sinew of the State, the men who get their living by the sweat of their brow, what do they think about it?

You have just now had the answer. After years of trial in the Legislature, after the recommendation even of our Governor, General Hartranft, it was voted down by a vote so decided that it will be some time before it will be again brought up. Why is this so? Because, as a friend near me suggests, "our people are so stupid." They are so stupid that they cannot understand the advantage of paying ten or twelve or fifteen or twenty per cent. for money. They have borrowed at six per cent. They have five hundred millions borrowed at six per cent., and they are not wise enough to see the advantage of going to their mortgagees to beg and pray that they may be allowed to keep it at nine or ten or twelve or fifteen per cent. They are a very stupid people! [Laughter.] The Legislature has been very peculiarly constituted. It represents a remarkably stupid people; but let us remember that this Constitution is to be ratified by those very people! If we make it so intelligent, so enlightened that stupid people will not adopt it, what is the use of our work? There is none.

Sir, all of the foul birds of the State, the hawks that have been enriching themselves at the public cost, are pluming their wings and waiting and watching anxiously to see what we may do. They wish us to make this great mistake. Let us make it, and what will be the consequence? The State will be flooded with tracts—and I shall be very sorry to be compelled to add to the number—the State will be flooded with tracts teaching the people that this Convention has been carried on in the interest of capital, at the expense of labor. If that is done, how many votes can it command? I venture the assertion that if you put this into your constitution, that instrument will be defeated by two hundred and fifty thousand majority; it will be defeated in this city by fifty thousand majority.

My friend (Mr. Knight) has spoken of the action of other States. We have just now been told that the Convention of Ohio

has postponed indefinitely a provision there offered to prevent the enactment of usury laws. Connecticut repealed her usury laws a year ago, and she is just now re-enacting them, because it was made the great political question in the State. The policy was found so ruinous that it could not be carried out. Let this section be passed here, or let the Legislature pass this in the shape of a law, and it will be the one question to be settled at the polls next autumn. New York, after a prolonged discussion, after money to any extent had been used, and after efforts that were beyond anything that had ever before been known, has just now refused even to change the penalties for usury.

In face of all these facts, we are asked to make a cast iron law, and to deprive the Legislature of all power to repeal it or to change it in any form. Suppose the experiment proves as destructive here as it has proved in Connecticut, what are you to do? You cannot change it; it will be in the organic law and it cannot then be changed.

But we are told that one-third of the members of this Convention can have this proposition submitted to the people for a separate vote. Well, admit that; suppose it is so. Your Constitution will be found in such very bad company that all will be lost. What did the gentleman from Columbia tell you the other day about the liquor law? He said that to put it in your Constitution, even under such circumstances, would imperil the Constitution. I say that to introduce this section would destroy it. We had a little experience here a few weeks since in reference to the bad effects of keeping bad company. The Committee on Agriculture, Manufacture and Commerce reported a chapter of some half dozen sections, the first of which was this one. Among the rest, I think there were two that had some claim to consideration, and I rather think they ought to have been adopted, but the company was so intolerably bad that it killed all the rest! We went on killing one section after another, determined that the pestilent thing should never come back again, in any shape or form. Now, put this into your Constitution, and the people will do with the whole instrument as we did with that chapter.

Gentlemen, adopt it if you like; I have nothing more to say.

Mr. BAER. Mr. President: I have been a borrower all my life, and expect to be one while I live, and I am entirely in

favor of raising the rate of interest. I speak here as the representative of the borrowing class, and for them I say that they demand at the hands of this Convention that if the Legislature refuses to raise the rate of interest, this Convention shall. I do not speak for those who have money to loan; I never had any money to loan; but I speak for myself, as one of the continual borrowers who have made this State what it is to-day. The spirit of progression, advancement and improvement is to be found among the borrowers of money, and not among the money lenders. Those who have money to loan do not invest it in enterprises for the development of the State and for advancement of the national prosperity. It is those who are ready to hazard capital in investments of this character who borrow money to do so and who are willing to pay high rates of interest in order to command the capital necessary for such a purpose. It is for them I claim that the rate of interest should be advanced; but while I say that, I want this Convention to afford us some protection from the sharks who will take the last penny of property from us if they have the opportunity.

For that purpose I offer the following amendment, to come in at the end of the section:

"And all contracts hereafter made for a greater rate than ten per cent. are hereby declared usurious, and no action shall be maintained on such contracts."

MR. DUNNING. Mr. President: I am not going to prolong this debate as long as did the gentleman from Erie, (Mr. Bowman,) but I desire to make one or two remarks right here. It has become a very common thing in this Convention for gentlemen to say if certain propositions are not incorporated into the fundamental law, down goes the Constitution. Every pet theory that any gentleman has—it matters not of how long standing—becomes to him all-important; if not incorporated into the Constitution, why down goes the instrument. I have a great veneration, sir, for age and experience. I listen with great pleasure to the remarks that fall from the lips of gentlemen of experience, men who have studied and studied deeply these problems. There are lessons of truth to be gathered from what they say upon these great questions; but I do not forget that there are questions and that there are problems, as I have said before, that belong to the pres-

ent and not to the past, and we must meet them accordingly. Gentlemen who come into this Convention with ideas that were conceived fifty years ago, and which they advocate zealously as sound and wise as can exist under any Constitution, must understand the idea that if they cannot carry their purpose upon the same terms as they could have done half a century back they must do the best that they can in the present. So if you cannot borrow money to-day as cheap as you did fifty years ago you must borrow it upon the best rates of interest that you can obtain in the market.

Like my friend from Somerset, (Mr. Baer,) I am among the borrowers of money, and not of the lenders. And it is just that class of men, the borrowers of money, as he has so well said, who keep the business interests of this country moving and agitate improvements. It is not the Shylocks who hoard their funds who build up a Commonwealth. It is the men of labor, the men of adventure, the men of liberal ideas, who use money in such a way that it contributes to the wide development of the resources of the country. These are the money borrowers. They are the liberal men of this country, and we like to meet liberal men when we want to borrow. [Laughter.] We find that their rate for rate and cent per cent. is fixed, and they will bleed us to the last extent. When that must be done, let it be done according to law, and that is all we ask for. Gentlemen ought not to violate the law of the State every time they borrow money, and I do not want the lenders of money to violate the statute law every time they loan money. Let us fix the rate and then let us live honestly up to it.

MR. LEAR. Sometime or other upon this question I would to give some views that I have upon it, and I believe that this is the proper time. I desire to speak on behalf of that class of people of the State of Pennsylvania to which the gentleman from Somerset, (Mr. Baer,) the gentleman from Luzerne, (Mr. Dunning,) and myself, belong—the borrowers of the State of Pennsylvania, who have some rights as well as the lenders. It is very well for the gentleman from Philadelphia, (Mr. Carey,) and the gentleman from Dauphin, (Mr. MacVeagh,) who is not here to-day, to say in an airy, imperious way that to put such a section as this into the Constitution of the State of Pennsylvania is financial ruin. It is just as pro-

per for us to say on the other side of the question, that such a thing is not financial ruin but is financial prosperity;*and so do I assert upon this floor to-day. I assert it on behalf of the people who borrow, on behalf of the people who labor, on behalf of the people who produce, on behalf of the people who are the strength, and wealth, and prosperity of the State of Pennsylvania.

A few years ago in the county of Bucks, where I reside, a man could buy a farm for which he could pay one-third or one-fourth of the money down, and he might allow the rest to lie at interest upon it. But since money is commanding a high price, and the railroad and other corporations of the State, and the adjoining and surrounding States, are paying a higher rate of interest, the farmer is not permitted to buy his farm, and earn it from the surface and from the bowels of the soil which he tills. He dare not buy a farm to-day and pay half or three-fourths of the money, for the next year the vendor will say to him: "You must pay me the balance of the purchase money or pay five per cent. in addition to your interest for its retention for another year."

Therefore it is that the capitalists instead of the working men of the country are beginning to own the farms, and the men who now till the farms are men who pay exorbitant rates of interest; and the capitalists from your cities and the capitalists from the country are the men who own the farms, and not the men who with their energy, their muscle and their thrift were making the plains of Pennsylvania blossom as a garden. These are the men in whose interest I speak, and in their behalf I ask that there may be a fixed rate of interest. I am in favor of the amendment of the gentleman from Somerset, because I say that these Shylocks, who are ready to suck the last drop of blood like vampires from the veins of the toiling men of Pennsylvania, are ready to take advantage of their necessities and will hold them up for a year or two until they get their last acre so burdened with mortgages at enormous shaves that they cannot exist financially any longer.

To say that money shall not bring its price, to say that you must be burdened with this rate of interest which we have now imposed on us in the State of Pennsylvania, to say that we shall have a usury law which we have this very day,

which is a delusion and a snare, by which you may contract for any rate of interest that you please, but cannot collect more than the six per cent., and if you do collect it, it may be recovered back, if the suit be commenced within six months—I say that such a delusive enactment as that upon the statute laws of Pennsylvania is a disgrace to the legislation of the State, and shows that those who were concerned in its enactment were afraid to face the necessities of this case and the realities of their position.

Why, Mr. President, there are others besides those who vote for this Constitution. There are widows and there are others who are not able to take care of themselves, and who are dependent upon the little stipend that has been bequeathed to them perhaps by a will or fixed by the law as an interest upon which their capital is limited; and those people, so far as I have heard, have no advocate upon this floor. Men have gone down to their graves supposing that they had provided in their wills a proper competence for their widows to live upon, and in our frugal community where I live, if a man had left the sum of \$10,000 to be invested at lawful interest for the support of his widow, she could live upon it and it was thought that it was rather a munificent provision for her support, and that provision was made when the rate of interest, as it is now, was six per cent., and when all the necessities of life could be purchased for one half of what they can be purchased for now. And while clothing of all kinds, everything that she puts upon her table, and everything that she wears has increased in value fifty or one hundred per cent., this poor widow's interest upon her \$10,000, or whatever the capital may be that fixes her income, has not raised according to it, and yet the capitalists, because we do not plead for them, can get their interest because they have the means of going into the market where money brings its real value, while the trustee, who has this money in his hands for the widow or the orphan will put it in some fixed investment, in a mortgage upon the farm or in some other place where it is certainly fixed and where he gets his interest regularly and annually; but the capitalist now asks for no lifting up of the rate of interest in Pennsylvania, for he goes into the market and he buys his bonds which bring seven or eight per cent., or he buys his paper guaranteed by

some enormous corporation that can afford to do it at a shave or a discount of ten per cent. These men get their interest who are able to live without it, and amass enormous fortunes upon it, but those people who are fixed by law to a limited income by the interest provided by law upon a gross capital, are limited now to take the same income which they were obliged to take ten, twelve and fifteen years ago.

We say that it is unjust, improper, illegal and contrary to the policy of this State, and people who say that it would be financial ruin are talking without understanding the circumstances of the case.

The PRESIDENT *pro tem*. The delegate's time has expired.

Mr. BAER. I call for the yeas and nays.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Somerset (Mr. Baer) to add to the amendment of the delegate from Philadelphia (Mr. Knight) the words, "and all contracts hereafter made for a greater rate than ten per cent. are hereby declared usurious, and no action shall be maintained on such contracts. On this amendment the yeas and nays are called for. Do ten gentlemen rise to second the call?

The yeas and nays were ordered, ten members rising to second the call, and they were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Andrews, Baer, Curry, Davis, Fulton, Guthrie, Heverin, Howard, Knight, Lear, Lilly, M'Culloch, M'Murray, Mantor, Mitchell, Parsons, Patton, Ross, Runk, Smith, Henry W., Struthers, Walker and Wetherill, J. Price—25.

NAYS.

Messrs. Achenbach, Addicks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Church, Cochran, Corbett, Corson, Cuyler, Dallas, Darlington, De France, Dodd, Edwards, Elliott, Ellis, Ewing, Fell, Finney, Funok, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Horton, Hunsicker, Kaine, Long, MacConnell, M'CLean, Mann, Minor, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Pur-

viance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Stanton, Stewart, Turrell, Wetherill, J. M., Wherry, White, Harry, White, J. W. F. and Woodward—77.

The amendment to the amendment was rejected.

ABSENT.—Messrs. Baker, Barclay, Bartholomew, Beebe, Boyd, Brodhead, Carter, Cassidy, Clark, Collins, Craig, Cronmiller, Curtin, Dunning, Lamberton, Lardis, Lawrence, Littleton, MacVeagh, M'Camant, Metzger, Pughe, Sharpe, Simpson, Smith, Wm. H., Temple, Van Reed, White, David N., Worrell, Wright and Meredith, President—31.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Philadelphia (Mr. Knight.)

Mr. J. M. WETHERILL. I move to amend by striking out "seven" and inserting "six," and striking out all after the words "per annum." It will then read:

"In the absence of special contracts, the legal rate of interest and discount shall be six per centum per annum."

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Philadelphia (Mr. Knight.)

Mr. KNIGHT and Mr. HUNSICKER called for the yeas and nays.

The call was seconded by ten members, and the question was taken by yeas and nays, with the following result:

YEAS.

Messrs. Addicks, Ainey, Baer, Boyd, Brown, Bullitt, Curry, Cuyler, Davis, Dunning, Edwards, Fell, Finney, Gilpin, Green, Guthrie, Hazzard, Heverin, Hunsicker, Knight, Lear, Lilly, M'Culloch, M'Murray, Mantor, Mott, Palmer, G. W., Parsons, Patton, Pughe, Purviance, Samuel A., Reed, Andrew, Stanton, Walker and Wetherill, Jno. Price—35.

NAYS.

Messrs. Alricks, Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Buckalew, Calvin, Campbell, Carey, Church, Cochran, Corbett, Corson, Dallas, Darlington, De France, Dodd, Elliott, Ewing, Fulton, Funck, Gibson, Hall, Hanna, Harvey, Hay, Hemphill, Horton, Howard, Kaine, Long, MacConnell, M'CLean, Mann, Mi-

nor, Mitchell, Newlin, Niles, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Read, John R., Reynolds, Rooke, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Stewart, Struthers, Turrell, Wetherill, J. M., Wherry, White, Harry, White, J. W. F. and Woodward—66.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Baker, Barclay, Bardsley, Bartholomew, Beebe, Brodhead, Broomall, Carter, Cassidy, Clark, Collins, Craig, Cronmiller, Curtin, Ellis, Lumberton, Landis, Lawrence, Littleton, MacVeagh, M'Camant, Metzger, Sharpe, Simpson, Smith, Wm. H., Temple, Van Reed, White, David N., Worrell, Wright and Meredith, *President*—32.

SEVERAL DELEGATES. Order of the day.

LEAVES OF ABSENCE.

Mr. KAINE. I ask leave of absence for Mr. Hanna for this afternoon.

Leave was granted.

The *PRESIDENT pro tem.* The hour of one o'clock having arrived, the Convention takes a recess until half-past three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

INVITATION TO GETTYSBURG.

Mr. M'CLEAN. I desire leave to send a telegram to the Clerk's desk to be read.

The *PRESIDENT pro tem.* A telegram, directed to the Convention, has been received. It will be read.

The *CLERK* read as follows :

Constitutional Convention, Philadelphia, Pennsylvania :

The town council of the borough of Gettysburg cordially invite the Constitutional Convention to adjourn to Gettysburg, and we tender to them the free use of Agricultural hall and four large committee rooms. While the members are engaged in revising the Constitution of the State they can restore their own exhausted constitutions by drinking Katalysine water free of charge.

DAVID WILLS,
President of Town Council,
Gettysburg.

Mr. DARLINGTON. I move that the invitation be thankfully received and referred to the committee on the subject.

The motion was agreed to.

LEGISLATION.

The *PRESIDENT pro tem.* The first business in order is the article on revenue, taxation and finance.

Mr. BUCKALEW. Before the Convention proceeds to consider that I desire to ask leave to present a proposition for reference to the Committee on Schedule.

Mr. HARRY WHITE. I ask that it be read.

The *CLERK* read as follows :

SECTION —. The provisions of the sixth and seventh sections of the article on legislation shall not apply to general statutes passed within three years for enforcing this amended Constitution, nor to revised statutes hereafter proposed by any commission for the general revision of the civil or penal laws of the State.

The *PRESIDENT pro tem.* The proposed amendment will be referred to the Committee on Schedule.

REVENUE.

The *PRESIDENT pro tem.* The Convention resumes, on second reading, the consideration of the article reported by the Committee on Revenue, Taxation and Finance. The pending question is on the seventh section, which will be read.

The *CLERK* read as follows :

SECTION 7. Neither the State, nor any county, city, borough, township or other municipality shall loan its credit or appropriate money to or assume the debt of, or become a shareholder or joint owner in or with, any private corporation or any person or company whatever.

Mr. HARRY WHITE. To the spirit of this section I have no objection whatever. I merely call the attention of the Convention to the fact that in words and in spirit it is provided for in the present Constitution, the language of which has already been adopted in the twentieth and twenty-first sections of the report of the Committee on Legislation. I am not devoted to anything that has come from any committee more than I am devoted to the present Constitution where it expresses the purpose that we have in view. I will read from the present Constitution :

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

That is the fifth section of the eleventh article. Then the seventh section of the same article provides:

"The Legislature shall not authorize any county, city, borough, township or incorporated district, by virtue of a board of its citizens, or otherwise, to become a stockholder in any company, association or corporation, or to obtain money for, or loan its credit to, any corporation, association, institution or party."

This is the amended Constitution of 1857. It was the outgrowth, the offspring of the evils which then prevailed by reason of the subscriptions of so many municipal corporations to particular railroad companies, which resulted in repudiation practically, or rather some complaint (I will not use an offensive word) in Allegheny county, in Butler county, and in Lawrence county against certain subscriptions made there. The beneficent effect of this provision is to be found in the fact that every municipality in Pennsylvania to-day is free from a debt by reason of any bond issued since its provisions were adopted. Inasmuch, then, as this amendment was adopted in 1857, and its wisdom has been proved, and it is understood by the people, I am opposed to any change. This question was before us when we had under consideration the report of the Committee on Legislation, and I find that precise language adopted in the twentieth and twenty-first sections.

Mr. BROOMALL. It is true, as the gentleman says, that the Committee on Legislation reported, with some small changes of phraseology for the worse, the exact language of the amended Constitution of 1857. The Committee on Taxation condensed those two sentences into one and embraced within that sentence a prohibition to the smaller municipalities, counties, &c., from assuming the debt or becoming the joint owner in or with any other concern, which was not in those provisions. When the article on legislation was under consideration, the Convention may remember I said that that matter had been before the Committee on Revenue, Finance and Taxation, where the subject more properly belonged, and that I proposed then to let those sections pass, and when this one came up to let it pass also, and let the Committee on Revision and Adjustment report whichever they think answers the purpose best, and then we can act upon it. Gentlemen will find repeated instances in which the articles overlap one another, and they will have

to select. The matter is not very important, but I think it would be better to preserve this phraseology at least for the consideration of the Committee on Revision and Adjustment, inasmuch as it embraces a little more in less language. I do have a respect for the language of the old Constitution, but not so much respect for the amendments to it which were got up with less care and often somewhat hastily, and are somewhat diffuse. I therefore ask that the Convention adopt this section and let the Committee on Revision and Adjustment act upon it as they see proper.

The PRESIDENT *pro tem.* The question is on the section.

The section was agreed to.

The PRESIDENT *pro tem.* The eighth section will be read.

The CLERK read as follows:

SECTION 8. No county, township, school district, or municipal corporation shall become indebted, in any manner or for any purpose, to an amount (excluding indebtedness existing at the adoption of this Constitution) in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the last assessment for county taxes prior to the incurring such indebtedness, and all contracts by which indebtedness beyond such limits would be incurred shall be void.

Mr. BROOMALL. This section was modified in committee of the whole, but was left, as I understand it, very unsatisfactory to certain portions of the State. I have been talking with some of the delegates from this city and some others, and I now propose what I think will meet the views of everybody. It has the advantage of embracing the same idea and being a little shorter; the difference is this, that the section allows that—

The PRESIDENT *pro tem.* The delegate from Delaware had better first forward his amendment, and after he has done that he can draw the distinction.

Mr. BROOMALL. I will do that, and after the amendment has been read by the Clerk I will explain the difference in three words.

The CLERK read the amendment as follows;

"No county, township, school district, or municipal corporation shall become indebted to an amount exceeding six per cent. of the taxable property therein: *Provided*, That where an indebtedness at the time of the adoption of the Constitu-

tion exceeds that limit, the same may be increased three per cent. on such valuation."

Mr. BROOMALL, It will be observed that the difference is just this: Section eight allows those corporations that have no debt, or a less debt, to incur indebtedness to the extent of two per cent. of the value of property. This amendment allows a limit of six per cent.; and also that in the case of any debt existing at present to the extent of six per cent., the municipality or other corporation shall have the liberty to extend it three per cent. more. I think it more important that there should be a limit than that the limit should be at any precise point. I hope the Convention will adopt the amendment.

Mr. BOYD. On this amendment I call for the yeas and nays.

Mr. HARRY WHITE. I second the call.

Mr. CAMPBELL. I merely wish to say a few words. Six per cent. is entirely too great for the city of Philadelphia. If we are permitted to increase in this manner our debt will run up to an enormous amount. I hope if the gentleman intends to press this amendment that he will except from it the city of Philadelphia.

Mr. BUCKALEW. I want to make an inquiry. I desire to know whether if this amendment be agreed to I can then propose to substitute a different proposition for the section as amended?

The PRESIDENT *pro tem.* The yeas and nays have been ordered, and the Clerk will proceed with the call.

Mr. BUCKALEW. Before the call is taken I simply desire to press my inquiry.

The PRESIDENT *pro tem.* The Chair will withdraw the order for the yeas and nays and allow discussion.

Mr. BUCKALEW. I was quite willing to have the gentleman from Delaware move his amendment to the section before I submitted my proposition, but I am afraid that I shall be excluded if I wait.

Mr. BROOMALL. In order to prevent this discussion, if the Convention will allow me, I will modify my amendment so as to strike out all after the first half dozen words, which are the same as in the section reported from the committee of the whole, and insert the corresponding language there. Then the gentleman from Columbia can insert his afterward.

Mr. BOYD. I desire to inquire from the Chair if my call for the yeas and nays is to be maintained.

The PRESIDENT *pro tem.* The Chair directed the call for the yeas and nays to proceed; but the gentleman from Columbia rose to make an inquiry, and the Chair withdrew the order.

Mr. BOYD. The question in my mind is whether that is regular.

The PRESIDENT *pro tem.* I thought it better. The delegate from Delaware will indicate his amendment.

Mr. BROOMALL. It is to strike out all after the word "indebted," in the second line, and insert: "To an amount exceeding six per centum on the valuation of the taxable property therein."

Mr. STRUTHERS. I ask for information whether I can move an amendment after this has been acted upon, which will be to this effect, "for the building of court houses and school houses." I wish to have those words introduced because some of the counties have not yet built their court houses and are preparing to do it, and it would require more money than this would allow.

The PRESIDENT *pro tem.* The Chair supposes such an amendment would be in order, but he will not be committed by what he says. [Laughter.]

Mr. BROOMALL. I call for the reading of the section as it would be if amended.

The CLERK. The section, if amended as proposed by the gentleman from Delaware, will read:

"No county, township, school district or municipal corporation shall become indebted to an amount exceeding six per centum on the valuation of the taxable property therein: *Provided*, That where the indebtedness at the adoption of this Constitution exceeds that limit, the same may be increased three per cent. on such valuation."

Mr. TURRELL. I want to say a word in opposition to that. I will not make a speech, but I hope it will not pass. It is too large an amount to put in the power of the men who manage these localities. As it stood in the first place, the two per cent. is enough. It has been made often a matter of the greatest tyranny and oppression. To put six per cent. in addition to all the other taxes in any municipality becomes a burden too great to bear. I hope the gentleman will modify it. They always go to the highest mark they have the chance to go.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Delaware.

Mr. J. W. F. WHITE. I hope the amendment proposed will carry. On a former occasion I spoke against the extreme limit of the small amount reported by this committee, because in some localities of the State a larger amount than two per cent. is absolutely necessary. I have simply to answer to the remarks of the delegate from Susquehanna (Mr. Turrell) that we do not in this section authorize every district in the State to go to six per cent. That is not the effect of this constitutional section. There will have to be legislative action besides this before they can incur any indebtedness at all. The question with us is simply this: Shall we fix a maximum amount beyond which the Legislature shall never authorize any county or municipality to incur an indebtedness?

There certainly can be no danger in putting in the Constitution a limit of six per cent. when heretofore there has been no limit whatever. We have never in this State had any limit whatever in our Constitution. Now, the limit proposed of six per cent. is a wonderful limitation and restriction upon the power heretofore held by the Legislature, and I hope that we shall not insert a constitutional section which may and undoubtedly will be oppressive in some localities of the State, simply because one or two localities of the State have already had perhaps a large indebtedness.

Further than that, it is manifestly unjust to those cities and counties which have not heretofore incurred an indebtedness that we shall now limit them to six per cent. when Pittsburg and Philadelphia have already three or four times that amount of indebtedness, and we allow them to go three per cent. more. I can conceive of no danger whatever in putting the limit at six per cent., and on the other hand I would put it at more than that, and give them a wider discretion still. Trust this question to the discretion of the people's representatives and to the people themselves. I hope we shall not put in this narrow limit of two per cent. and make that procrustean bed for those localities which have not already made their improvements, and prevent them from making similar improvements to those made by the large cities already in our State.

Mr. BUCKALEW. I will move my amendment at this time. It is a fit subject to be before the Convention.

The PRESIDENT *pro tem*. The amendment to the amendment will be read.

The CLERK. The amendment if amended as proposed, will read as follows:

"No debt of any county, city, borough, township, school district or other municipality or incorporated district, except as herein provided, shall ever exceed five per centum upon the assessed value of the taxable property therein; nor shall any such municipality or district incur any debt or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property, without the assent of the electors thereof at a public election, in such manner as shall be provided by law: *Provided*, That any city, the debt of which now exceeds seven per centum of such assessed valuation, may be authorized to make loans not exceeding three per centum in the aggregate in existence at any one time upon such valuation in increase of its indebtedness until its debt shall be reduced below seven per cent. upon such assessed valuation."

Mr. BUCKALEW. The members of the Convention will recollect that this is substantially an amendment proposed in committee of the whole at a time when we had a very thin attendance and was not pressed, but was received with much favor at the time.

It consists of three parts. First, it fixes a general limitation upon the aggregate of municipal indebtedness in any case at five per cent., which is the provision in the Constitution of Illinois, the most recent Constitution of any importance which has been made. I think that would be sufficient, and at the same time it would be a great security to the people.

The second division of the amendment provides that no new debt or any increase of existing debt exceeding two per cent. shall ever be authorized in any municipality without the express assent of the electors of the municipality by a public vote.

The third and last division of the amendment, and in fact the most material one as distinguished from the proposition of the gentleman from Delaware, is the particular arrangement provided for the case of cities that already have large debts. The provision is that wherever a city has an existing debt exceeding seven per cent., which is the case of both Philadelphia and Pittsburg, the law-making power may authorize new loans not exceeding three per cent. of the assessed value of

property, and that percentage is not to be transcended by the aggregate of increase at any one time. There is a material difference between the arrangement of the gentleman from Delaware and this amendment in that particular. His amendment will allow the public debt of any city to be at all times at least eight per cent., whereas under this amendment if the debt of any city shall be reduced say to two or three or four per cent. at any future time the increase can never be more than three per cent. at any moment of time above the lowest mark to which the debt may be reduced. In the case of Philadelphia, their debt is something over ten per cent. as I understand. Then if the debt should be reduced to five or six per cent. hereafter, it can never go up as high as it is now. But, sir, as I understand the gentleman from Delaware does not care to have the debate protracted, I will say no more. I have said sufficient to explain my amendment.

Mr. BROOMALL. I will accept the amendment of the gentleman from Columbia.

Mr. LILLY. There is one question that I desire to ask; I do not intend to make a speech. I desire to know what the indebtedness here referred to covers. In the borough in which I reside we have three kinds of debts, all three of them coming under different heads and applying to different departments, no one of which controls the other. Each one is independent of the others. One is for water purposes, another for school purposes, and the other for the poor. Now, what does this section mean as applied to a case of that sort? Does the seven per cent. cover them all, or does it apply to each one? I should like to be informed on that point before I vote on the amendment.

Mr. BUCKALEW. I ask for the reading of the amendment again. That will explain it.

The CLERK read the amendment.

Mr. J. PRICE WETHERILL. Before the adoption of that amendment I should like to ask the gentleman from Columbia whether, if the city of Philadelphia desired to borrow \$1,000,000 when its indebtedness exceeded seven per cent. of the assessed value of its property, it would not have to go to Harrisburg and secure a law for that purpose?

Mr. BUCKALEW. I do not know what are the existing laws in this city with reference to that subject.

Mr. J. PRICE WETHERILL. The existing laws are that a majority of the select and common councils can authorize a loan on certain conditions. This proviso says that when the city desires to increase its indebtedness, it may do so as provided by law, which might compel the city to go to Harrisburg and get a law passed before it could make a loan.

Mr. BUCKALEW. I cannot answer the question of the gentleman from Philadelphia, because I do not know the character of the existing statutes upon this subject. If there is a power to borrow money this section can only limit that power to the extent of seven per cent. on the assessed valuation of property.

I desire to say in answer to the gentleman from Carbon, (Mr. Lilly,) that if the support and maintenance of the poor in his town of Mauch Chunk is charged upon the borough, it will be included in the general borough obligations; but if a borough is also a school district the five per cent. will not apply to loans for school purposes. The school district and the borough are kept separate in this regard, and it is necessary that there should be liberal power conferred upon school districts. Therefore, if the borough is indebted for school purposes, the five per cent. would apply to the school district, but the other two objects which he mentioned would be united together.

Mr. BOYD. I hope that the Convention will adhere to the section as it was reported from the committee of the whole. We all know that subject was thoroughly considered and elaborately discussed, and it is now in a shape that is easy of comprehension. I think I understand it thoroughly. I am perfectly aware that it is impossible to guard this kind of thing as it should be, but it seems to me that when we agreed upon the section reported for second reading, that we arrived at the best conclusion and the most intelligible one possible under the circumstances.

When I first heard the amendment read of the gentleman from Columbia, it seemed to me to be the thing; but when we come to consider that it contains the word "assessment," without referring to what assessment, a very plain difficulty arises. An assessment can be so fixed by those interested in swelling the valuation of property, just before the vote is taken, that practically the limitation of this amendment amounts to no limitation whatever. For example, those in authority

desiring to raise the sum to suit themselves will know just how to fix the assessment to raise the required amount. They will arrange among themselves to contract a debt of a large amount of money, and under the operations of this amendment they will of course submit it to a vote of the people and of course manipulate the vote to suit themselves. I therefore repeat that as far as the limitation is concerned it is of little value, because the assessments are entirely in the hands of the officials, to be so manipulated as to make the valuation of property pretty much to suit them. They could extend this abuse in reference to the valuation of property to a much greater degree under this amendment than they could under the section as reported from the committee of the whole.

I can understand why gentlemen from large cities like Philadelphia and Pittsburgh, both of which we have heard from, are opposed to any restriction. Everybody knows that they have a debt of untold millions in this city, and since we have been in session, we have not had any satisfactory or reliable statement of its magnitude.

Mr. MACCONNELL. Will the gentleman allow me to explain?

Mr. BOYD. I have not said a word yet about the gentleman.

Mr. MACCONNELL. I only beg to say that the Convention has not heard from any delegate from Allegheny city upon this question. We have heard from a gentleman from Allegheny county, and I desire to say, for one, that I am entirely opposed to the position taken by my colleague (Mr. J. W. F. White.)

Mr. BOYD. I did not allude to the gentleman on the other side of the House at all. I was referring to Mr. J. W. F. White.

We all know that things can be so managed that a debt can largely exceed even six per cent. of the assessed value of property. The actual debt may be so manipulated that it may be twelve per cent. instead of six. By issuing orders or certificates, not exactly of indebtedness, but a memoranda of indebtedness which is to be liquidated, but which can be so regulated that the term debt will not apply to it. It will be a floating and unascertained debt, and yet it is hardly in a shape to be called a debt liquidated; and in that way, under the amendment of the gentleman from Columbia, even with the seven per cent. restriction, the debt can

be kept up to ten or twelve per cent. This could not be done under the section reported from the committee of the whole. If the amendment be adopted, the officers of the municipality can keep up a large debt, in spite of the limitation.

I think that inasmuch as the section reported from the committee of the whole was well considered, and also for the reasons that I have urged against the amendment, the amendment should be voted down, and the Convention should adhere to the section in its present shape.

Mr. J. W. F. WHITE. I wish to add merely a word, Mr. President. If the delegate from Montgomery (Mr. Boyd) had listened to what I said, he would have discovered that I was not arguing for Pittsburgh or for Allegheny county.

Mr. President, I was not arguing for Pittsburgh. I merely advocated the right of other cities in the State, and other counties in the State having the advantages that Pittsburgh and Allegheny county have enjoyed. I advocated a higher rate for their advantage, even for Bucks county or Montgomery county. If they want to incur indebtedness for a great public improvement, why not let them have the advantages that Allegheny county has had or Pittsburgh or Philadelphia has had. My argument was entirely in favor of them and not in favor of Pittsburgh. You propose to do all that Pittsburgh wants. We do not ask for anything more. We have made our great improvements, we have expended our money in Pittsburgh and built it up to be a magnificent city. We have a large indebtedness and we are able to pay it, and so will Allegheny county. It never has repudiated and never will repudiate. If gentlemen knew what they were talking about they would know that neither Allegheny county nor the city of Pittsburgh ever did repudiate any debt.

Mr. BOYD. They tried very hard.

Mr. J. W. F. WHITE. They never did, never tried to repudiate anything. If they knew the history of that matter, they would know this: That there were certain railroad bonds which were fraudulently put in the market and sold in violation of the law under which they were issued; and in place of being sold as the law required, for very nearly par, they were parted with at less than one-half the face of the bonds; and we thought in Allegheny county when the bondholders had got those bonds in violation of the law, they ought to get merely what they

had paid on those bonds. That was our struggle. It was on the ground of equity and not to repudiate. All along, that was the proposition, to give to them what they had paid on their bonds, because they had become parties to the violation of the law, when they purchased the bonds in the very teeth of the act of Assembly. I did not think it necessary, and I presume the other members from Allegheny county did not think it necessary, to revert to this thing of repudiation. It has often been hurled in our face and become so common that we have got to think very little about it; but I hope if is any gratification to the delegate from Montgomery, he will repeat it from this time forward every day until we adjourn.

The *PRESIDENT pro tem.* The question is on the amendment.

Mr. BOYD. I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call, and they were taken with the following result:

Y E A S .

Messrs. Achenbach, Armstrong, Baer, Bailey, (Huntingdon,) Beebe, Biddle, Bigler, Black, Charles A., Bowman, Broomall, Brown, Buckalew, Calvin, Church, Corson, Cronmiller, Curry, Curtin, Cuyler, Darlington, Davis, Dunning, Elliott, Fulton, Guthrie, Hall, Hay, Hazard, Heverin, Lilly, M'Culloch, M'Murray, Mantor, Minor, Mott, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Runk, Russell, Smith, H. G., Stanton, Struthers, Temple, Turrell, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Wright—57.

N A Y S .

Messrs. Alricks, Andrews, Baily, (Perry,) Kannan, Barclay, Boyd, Campbell, Carter, Cochran, De France, Edwards, Ellis, Ewing, Funck, Gibson, Gilpin, Harvey, Hemphill, Horton, Howard, Hunsicker, Kaine, Lawrence, Long, MacConnell, M'Camant, M'Clean, Mann, Mitchell, Patterson, D. W., Purviance, John N., Purviance, Samuel A., Smith, Henry W., Van Reed, Walker and Wetherill, J. M.—36.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Black, J. S., Brodhead, Bullitt, Carey, Cassidy, Clark, Collins, Corbett, Craig, Dallas, Dodd, Fell,

Finney, Green, Hanna, Knight, Lamber-ton, Landis, Lear, Littleton, MacVeagh, Metzger, Newlin, Palmer, G. W., Porter, Read, John R., Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, White, David N., Woodward, Worrell and Meredith, *President*—40.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

The section as amended was agreed to.

The *PRESIDENT pro tem.* The next section will be read.

The *CLERK* read as follows:

SECTION 9. Any county, township, school district or municipal corporation, incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

Mr. Kaine. Mr. President: I should like to know from the chairman of the committee the operation of this section or why it should go into the Constitution. I look upon its working as being utterly impracticable that any officer or set of officers about to incur a debt should, at the same time or before that time, make any provision for a tax for the payment thereof within thirty years. I think such an enactment impracticable, and that it would be utterly nugatory. It is a matter of legislation, at any rate, and I think it ought not to go into the Constitution.

Mr. Minor. Mr. President: I see difficulties in this section. I will point out one or two of them. It says, for instance, that a school district shall not incur indebtedness, unless it shall, "at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principle thereof within thirty years." There are school districts in this State that have no power at all to provide a tax, annual or otherwise. In the city of my own residence, if you please, our school district is co-extensive with the city, and the power of taxation is taken away from it entirely. The city attends to that matter, and if this section be passed the school district could not incur a single dollar of indebtedness, because it would not have the power to levy a tax. So it is with regard to townships. We do not know what will be the future arrangement for taxes which may be made by the Legislature, whether it be by counties, by townships, by school districts, or how it will be. At

the present it certainly involves impossibilities, and it may in the future.

I cannot, therefore, of course, vote for it as it stands, because it must nullify the action of many parts of the State.

MR. BROOMALL. I do not see the matter in the way that the gentleman who last spoke does. Every municipality that is authorized to borrow at all is authorized to levy taxes, and all of them have some limit as to the tax. It is certainly a wholesome provision to require at the time a debt is being incurred the imposition of a tax that shall be sufficient to pay the interest and the principal within some given time. It is a wholesome guaranty, against too much debt to make the people begin to feel the tax that it is going to put upon them at once. I look upon that, in connection with the next preceding section, as necessary guards against the extravagant running into debt on the part of every municipality in the State that exists at this time. I trust the Convention will see the importance of passing this section as it is. If the term of thirty years is not long enough, let it be increased.

The PRESIDENT *pro tem*. The question is on the adoption of the ninth section.

MR. KAINE. I call for the yeas and nays on that section.

MR. HUNSICKER. I second the call.

The question being taken by yeas and nays resulted, yeas sixty-five, nays twenty-four, as follows:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bannan, Barclay, Biddle, Bowman, Broomall, Brown, Buckalew, Campbell, Carter, Church, Corson, Cronmiller, Curry, Curtin, Darlington, Davis, De France, Dunning, Edwards, Elliott, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hazzard, Heverin, Horton, Howard, Lawrence, Lilly, MacConnell, McCamant, McCulloch, McMurray, Mantor, Newlin, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Runk, Russell, Smith, H. G., Stanton, Stewart, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, Harry, White, J. W. F. and Wright—65.

NAYS.

Messrs. Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Bigler, Black,

Charles A., Boyd, Calvin, Ellis, Hall, Hunsicker, Kaine, Knight, Long, M'Clean, Mann, Minor, Mitchell, Patterson, D. W., Reed, Andrew, Reynolds, Smith, Henry W., Struthers and Wherry—24.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Black, J. S., Brodhead, Bullitt, Carey, Cassidy, Clark, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Dodd, Ewing, Fell, Finney, Hanna, Hay, Hemphill, Lamberton, Landis, Lear, Littleton, MacVeagh, Metzger, Mott, Niles, Palmer, G. W., Porter, Ross, Sharpe, Simpson, Smith, Wm. H., Temple, Turrell, White, David N., Woodward, Worrell and Meredith, *President*—44.

The CLERK read the next section as follows:

SECTION 10. To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars. The said sinking fund may be increased from time to time by assigning to it any part of the taxes or other revenues of the State not required for the ordinary and current expenses of government; and, unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in extinguishment of the public debt, until the amount of such debt is reduced below the sum of five million dollars.

MR. BROOMALL. That is simply the sinking fund of the present Constitution modified as was necessary to bring it up to the present time.

MR. HARRY WHITE. I understand of course the purpose of this provision. I hold in my hand the old section adopted in 1857, before the sale of the public works, but in anticipation thereof. I have no complaint whatever to make of this section, but I submit that the doubt ought not to exist which may exist if the section is adopted. I only call attention to lines five and six: "The said sinking fund may be increased from time to time." Now, I find in the old Constitution this provision: "Which sinking fund shall consist of the net annual income of the public works from time to time owned by the State, or the proceeds of the sale of the same, or any part there-

of, and of the income or proceeds of sale of stocks owned by the State, together with other funds or resources that may be designated by law." That is just what was desired, and the new section is in harmony with that; it does not absolutely require the proceeds of the sale of the public works to continue in the sinking fund. For that purpose I move to amend by adding after the word "fund," in the sixth line, the words, "shall consist of the proceeds of the sale of the public works and such other funds and resources as may be designated by law, and."

One word of explanation. The chairman of the committee desires to continue the sinking fund as it now exists; I desire to do so, too; and I am satisfied the Convention does. I agree to the language of the first portion of the section:

"To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof by a sum not less than \$250,000."

The only difference between this and the old Constitution is, that the old Constitution provided that the sinking fund should consist of the proceeds of the sale of the public works, or any part thereof, and such other revenues as should be designated from time to time. Now, we have the proceeds of the sale of the public works, amounting to nine and a half millions, and they are in the sinking fund to-day by virtue of the constitutional enactment of 1857. I want them to remain there; but I submit that if you do not insert here the words of the old Constitution in this respect, there may be a doubt on that subject, and for the purpose of removing that doubt I merely propose to add these words, and then authorize the putting into the sinking fund of such funds, from time to time, as may be designated by law. The delegates are aware that by the act of 1858 a large class of revenue was designated and directed to be placed in the sinking fund, and has been there ever since. You do not want to interfere with that, nor does the amendment otherwise interfere with it.

Mr. BROOMALL. The committee supposed that the words "continue and maintain" covered that whole ground. If there is any doubt about it, let the amendment go in. We did not desire to put in

unnecessary words, and we supposed that with these words and with the prohibition to take any part of the fund out except for the extinguishment of the debt, we had really covered the whole ground; but if the Convention thinks there is any doubt about it, let the amendment go in.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Indiana, (Mr. Harry White.)

The amendment was agreed to.

Mr. DARLINGTON. I move to amend by striking out after the word "debt," in the tenth line, the words "until the amount of such debt is reduced below the sum of five million dollars."

This amendment merely strikes out the qualification that the public debt shall be reduced by the sinking fund until it is reduced below the sum of \$5,000,000. I see no necessity of having any limitation now. At the time it was first adopted the debt was much larger than it now is.

Mr. BROOMALL. I have no objection to that amendment.

The amendment was agreed to.

Mr. STRUTHERS. I move to amend the section in the sixth line by striking out the word "may" and inserting "shall," so that the clause will read: "The said sinking fund shall be increased," &c.

Mr. BROOMALL. I have no objection to that.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 11. The moneys of the State, over and above the necessary reserve, (which shall be as small as possible consistent with the public demands,) shall be used in the payment of the debt of the State, either directly or through the sinking fund; and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State.

Mr. DARLINGTON. I move to amend, by striking out all after the word "State," in the third line, to the end of the section. The reason I make this motion is that I do not wish the public money to be applied in any other way than in the payment of the debt, and I do not wish it to be implied even that it may be loaned in any way or invested in any bonds.

Mr. BROOMALL. I should be sorry to see that amendment adopted. We should then lose the benefit of this last clause, "and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State." If the sinking fund moneys have to be invested any more again, they shall never be invested in any other way than that. By this amendment we should lose the benefit of that, and I do not see that the words "either directly or through the sinking fund" do any harm, because one mode of paying the debt is to increase the sinking fund for the purpose of doing it. I should be sorry to see the amendment adopted.

Mr. DARLINGTON. My only reason, in a single word, is this: The purchase of the bonds of the State, and the extinguishment of them is the better way always.

Mr. NILES. Suppose the bonds are not due?

Mr. DARLINGTON. No matter; let them be purchased just as the government of the United States after the Mexican war purchased the government bonds and extinguished them.

Mr. BROOMALL. This does not hinder them doing that.

Mr. DARLINGTON. Yes, it does. It implies that you may lend this money by investing in bonds and holding them. My idea is to purchase them in the market if they are not due, and extinguish them—cancel them.

Mr. BROOMALL. Suppose you cannot get them?

Mr. DARLINGTON. You can always get them if you pay the market price for them.

Mr. HARRY WHITE. May I ask what the exact amendment is?

The PRESIDENT *pro tem*. The amendment is to strike out all of the section after the word "State," in the third line.

Mr. HARRY WHITE. I submit, Mr. President, that this is an exceedingly important question. It is no trifling matter. It involves the policy of the management of the State Treasury, against which so much complaint has been made from time to time, seriously affecting what has been charged against the State Treasurer, unjustly doubtless, from time to time, that he was making money by manipulating the public funds. The Convention will understand that you have provided for a sinking fund, which is sacredly devoted

to the payment of the public debt. Then you have a current expense fund. Now, let us discriminate. Is it the desire of this Convention to authorize that sinking fund to be invested upon loans for the benefit of the Commonwealth; or is it the desire to allow only what is called the reserve fund, or what we might properly call the current expense fund, to be loaned for the benefit of the State, and called upon from time to time? It is well enough for us to understand just what we are doing. Observe, the section reads: "The moneys of the State, over and above the necessary reserve (which shall be as small as possible consistent with the public demands) shall be used in the payment of the debt of the State." So far, it is all right. I am in favor of that.

Mr. PURMAN. I ask the gentleman, if he would end the section just as the amendment of the gentleman from Chester proposes, what he would do with the sinking fund? After you had used enough of the revenue of the Commonwealth to pay the ordinary expenses and used all the balance to buy up the debts of the Commonwealth, where would you get anything to put in the sinking fund?

Mr. HARRY WHITE. There is no difficulty about that. My distinguished friend from Greene (Mr. Purman) had the honor at one time to be chairman of the Finance Committee of the Senate, and a very excellent chairman he made too, and recalling his own experience will suggest the remedy in that respect. If I had it in my power, I would not allow the sinking fund to be touched for the current expenses of the government at all. I would have your current expense fund and your sinking fund which you have provided for—

Mr. PURMAN. The gentleman from Indiana does not understand me. What I mean is, that if this section be amended as proposed by the gentleman from Chester, then there can be no money sent into the sinking fund. The gentleman from Indiana and myself agree in keeping the sinking fund sacred, apart from all other matters; but if the section be amended as proposed, you cut out the sinking fund because you absorb all the sources from which it is derived except the proceeds of the sales of the public works.

Mr. HARRY WHITE. Very well; I would do so. If you are going to have any constitutional admonition on the subject, I would have an admonition of this kind. This is not at war with the

policy of a sinking fund. What is the object of a sinking fund? It is to have a fund sacred for a particular purpose. Very well. Now, if that sinking fund is not necessary, if the wisdom of the Legislature shall determine that it is not necessary for the current expenses of the government, use it under the management of the Commissioners of the sinking fund for the payment of the State debt immediately or as soon thereafter as possible. If you will have any admonition at all upon the State, just stop there and make a general declaration that: "The money of the State over and above the necessary reserve (which shall be as small as possible consistent with the public demands) shall be used for the payment of the State debt."

Then you have section twelve, in which it is provided that "All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, or in loans upon the security of the bonds of the United States, or of this State, and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security."

If the estimate, for instance, at the end of the fiscal year, or in the middle of the fiscal year, which is the first of June, shall show that the Commissioners of the Sinking Fund will require \$2,000,000 for the current expenses of the government, \$1,000,000 of which will be required on the first of August to pay the interest on the public debt, and another million in three months time, the Commissioners can so arrange as to invest this \$2,000,000 in some bank, requiring collateral security therefor in the shape of United States bonds or the bonds of the State. That is not inconsistent. I am in sympathy with the amendment offered by the gentleman from Chester, and I think it is in entire harmony with the rest of our work.

Mr. PURMAN. I am much obliged to the gentleman from Indiana for the compliment he has paid me as chairman of the Committee of Finance of the State Senate, which "does me honor over much." I beg his pardon for having interrupted him so unceremoniously. We find in the section that we have already adopted that "The said sinking fund may be increased from time to time, by assigning to it any part of the taxes or other revenues of the State, not required for the

ordinary and current expenses of government; and unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in extinguishment of the public debt, until the amount of such debt is reduced below the sum of five million dollars." If you amend section two as proposed by the gentleman from Chester you will lose the vital part of this section. Then you have in the next section a constitutional provision requiring that "The moneys of the State, over and above the necessary reserve, which shall be as small as possible consistent with the public demands, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State."

All the revenues of the Commonwealth that are raised over and above what is necessary to defray the expenses of the government will be used for the payment of the debt of the State, and therefore there will be nothing to put into the sinking fund. You break up by this section, if amended as proposed by the gentleman from Chester, all the sources of the sinking fund. I am in favor of preserving the sinking fund inviolate for the purposes specified in the Constitution. I have always been opposed to any infringement upon it. I am in favor of that now. I am in favor of continuing such sources of revenue as can be sent into that sinking fund. Either this section ought to remain as reported by the committee of the whole or else it should be voted down, and I do not see that the section itself is of much value.

The amendment was rejected.

MR. KAINE. I move to amend the section by striking out in the second line all after the word "reserve" down to and including the word "demands" in the third line. The words I desire to strike out are, "which shall be as small as possible consistent with the public demands."

The section, if so amended, would read: "The moneys of the State over and above the necessary reserve, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State."

My desire is to abbreviate the section as much as possible.

The amendment was agreed to.

Mr. H. W. SMITH. I propose to amend this section by striking out the last words, "or of this State." When I owe a debt I pay it, and I do not invest it in another debt that I owe. Why should we invest any surplus of the sinking fund in the debt of the State? Why not, if there is anything in the State Treasury, apply it to the payment of the State debt? I fear that something may happen with this sinking fund so that it may sink away all together. Pay the State debt! Cancel it! Extinguish all the evidences of indebtedness!

What is the meaning of this? It is a well settled principle of common law that when the same hand is to receive and pay, the debt is extinguished by operation of law. Here it is proposed to create debt in the same way.

I do not desire to say anything further in advocacy of my amendment, but simply to call for the yeas and nays.

Mr. NILES. Oh, no!

Mr. H. W. SMITH. Yes, sir. I insist upon it. I do not occupy much of the time of this Convention, and I am entitled to insist upon my call for the yeas and nays.

The PRESIDENT *pro tem.* Is the call for the yeas and nays sustained?

More than ten members rose.

The PRESIDENT *pro tem.* The call for the yeas and nays is sustained, and the Clerk will proceed with the call.

Mr. BROOMALL. Before the yeas and nays are taken, I desire to say one word on this subject. Although as a rule I would much prefer to strike out the words "or of this State," and would much prefer that the bonds should be bought so that the debt may be extinguished to the extent of any surplus money which may be in the possession of the State, there may still be times when an exorbitant price may be charged for the bonds of this Commonwealth, and it may not be prudent to buy them although we may with perfect safety loan upon them for a temporary period.

The PRESIDENT *pro tem.* The question is upon the amendment of the gentleman from Berks (Mr. H. W. Smith) to strike out the words "or of this State." Upon that question the yeas and nays have been ordered and the Clerk will proceed with the roll.

The yeas and nays were taken with the following result:

Y E A S.

Messrs. Alricks, Andrews, Bannan, Barclay, Bigler, Black, Charles A., Boyd, Campbell, Carter, Clark, Curtin, Darlington, De France, Finney, Fulton, Gibson, Hall, Horton, Hunsicker, Long, M'Clellan, Smith, Henry W., Van Reed and White, Harry—34.

N A Y S.

Messrs. Achenbach, Addicks, Armstrong, Baer, Baily, (Perry,) Biddle, Bowman, Broomall, Brown, Buckalew, Calvin, Cassidy, Church, Corbett, Cronmiller, Curry, Cuyler, Davis, Edwards, Elliott, Ellis, Ewing, Funck, Green, Guthrie, Harvey, Hazzard, Howard, Kaine, Knight, Lawrence, Lilly, MacConnell, M'Camant, M'Culloch, M'Murray, Mann, Mantor, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Stanton, Stewart, Struthers, Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, J. W. F., Woodward and Wright—64.

So the amendment was rejected.

ABSENT.—Messrs. Ainey, Bailey, (Huntingdon,) Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Bullitt, Carey, Cochran, Collins, Corson, Craig, Dallas, Dodd, Dunning, Fell, Gilpin, Hanna, Hay, Hemphill, Heverin, Lamber-ton, Landis, Lear, Littleton, MacVeagh, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Patton, Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Temple, White, David N., Worell and Meredith, President—35.

The PRESIDENT *pro tem.* The question recurs upon the section as amended.

Mr. DE FRANCE. Let it be read.

The CLERK read as follows:

"The moneys of the State, over and above the necessary reserve, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State."

The section as amended was agreed to.

The PRESIDENT *pro tem.* The twelfth section will be read.

The CLERK read as follows:

SECTION 12. All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, or in loans upon the security of the bonds of the United States, or of this State, and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security.

Mr. ALRICKS. I move to amend by striking out in the second line of the section the words, "in loans upon the security of the bonds of the United States or of this State," so that the section will read, "all moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security."

Mr. BROOMALL. I desire to state that there is a verbal inaccuracy in the printing of this section. The word "in" is left out before the word "or," which, when it is inserted, will so change the phraseology that I think the gentleman from Dauphin will be satisfied with it.

Mr. ALRICKS. I want to make it as brief as possible.

Mr. BROOMALL. The section ought to read, "all moneys of the State shall, as far as possible, be kept at interest for the benefit of the State in, or in loans upon, the security of the bonds of the United States or of this State."

I ask unanimous consent to have this correction made.

Unanimous consent was given, and the section was so modified.

Mr. BROOMALL. The object in putting it in the alternative was just this: That this section applies to moneys in the Treasury which are loaned now, as I now understand, to certain pet banks or individuals or firms all over the State, for purposes that are said not to be very upright. The object is to break up that business, and to compel everybody that gets public moneys, to give security of a definite kind, either the bonds of the United States or of the State of Pennsylvania.

Mr. ALRICKS. The object is perfectly right.

Mr. CURTIN. Will it leave to the State Treasurer, or any other authority,

the right to lend the money in the Treasury at interest?

Mr. BROOMALL. It is not a question of whether the State Treasurer shall loan the money. The object of the Committee on Revenue, Taxation and Finance was to see that the money was properly secured by making it only loanable upon the bonds of the State or of the United States, and that the interest shall go to the State, for the benefit of the State, and not for the benefit of the officials in charge of the money. The understanding now is that there are from one to seven or eight millions of money which instead of being in the vaults at Harrisburg, are scattered all over the State, upon little or no security, and upon interest payable to some one else beside the State. It is to break up this business that the Committee on Revenue, Taxation and Finance have reported this section, and they look upon it as the most valuable section in the whole article; because if the Legislature acts under it, and requires a publication of where the money is, to whom it is loaned, and on what security, I suppose there could be no further complaint of the misuse of the public moneys for the purpose of keeping special persons in office.

Mr. CURTIN. I have not the slightest objection to this section, provided it means that the State Treasurer or any of the authorities who shall have charge of the money, will invest that money in bonds of the United States or of the State. With that I shall be perfectly satisfied, but I do most seriously object to allowing the State Treasurer to lend the money of the State at interest on any other kind of security.

Mr. BROOMALL. Certainly, that is what the Committee on Revenue, Taxation and Finance desire.

Mr. CURTIN. You will make your State Treasurer a broker at once if you allow him to invest the moneys of the State at interest; and while it may be true, and no doubt is, as the gentleman states, that the money of the State is now loaned to pet institutions or individuals and the interest goes into the pockets of the official, directly in the face of penal enactments, I would not put in the fundamental law of the State an authority to the State Treasurer to loan the money at interest. I would not make him a broker to loan the money of the people of this State to any one, but to put it in the se-

curities of the United States or of this State.

Mr. BROOMALL. I entirely agree with the gentleman, if he will allow me to say so; but there are certain moneys that it would be imprudent to invest in the purchase of those bonds, and it is these moneys that should be loaned upon these securities, because these are the moneys that are to be loaned and will be loaned by the State Treasurer anyhow. They are moneys that it would not do to invest permanently. These are the moneys that are loaned for the use of private persons, or for worse purposes, and the object is not to make the State Treasurer a broker, but that the Legislature shall provide by law that in some way or other the money that is now misused shall be used for the benefit of the State, in nothing less than the security of the bonds of the United States or of the State.

Mr. CURTIN. I understand the gentleman perfectly, that there are certain moneys in the treasury which would not be invested in bonds of the United States or of the State.

Mr. BROOMALL. In actual purchase.

Mr. CURTIN. There are certain moneys which you leave to the State Treasurer.

Mr. BROOMALL. No, sir.

Mr. CURTIN. The bonds of the State can be always bought in the open market as well as the notes of individuals and banks, and they can be sold in one hour by telegraph in any banking market in the world. Now, while you prevent the State Treasurer from loaning the money of the State for his own benefit, and subject him to high penal enactments if he does do so, you put into your Constitution the power that the State Treasurer shall loan the money, and he loans the money upon such securities as he may consider good under the provision of acts of Assembly; and if the money is not paid at the time it is due, there is a contract which shields the State Treasurer and his bail from the payment of any sum of money. If there is any money left in the Treasury of the State, over and above that which is necessary for the payment of the public debt, I think it is simply right to invest it in the bonds of the State; but I would not allow the State Treasurer to loan it to any bank.

Mr. GIBSON. I understand the chairman of the Committee on Revenue, Taxation and Finance to propose by this section that as much money as possible be kept for the benefit of the State in bonds.

Mr. CURTIN. No, that is not it. That is the objection that I make. I know the common sense of the chairman of the committee will see that the State Treasurer ought not to be allowed to loan the money of the State at interest.

Mr. BROOMALL. We have provided in this section that he shall not loan except on certain security.

Mr. CURTIN. I would not put that in. I would not allow the State Treasurer to loan any money whatever. You might just as well invest it in any individual bank.

Mr. DARLINGTON. I beg this Convention to pause one moment before we put any such provision in the Constitution as is contained in the twelfth section. What have you done by the eleventh section? You have provided that the money of the State, over and above the necessary reserve, shall be used in payment of the debt of the State, through your sinking fund or otherwise. We want no money to be at interest. There should be no money in the Treasury except the proper reserve, necessary for the ordinary expenses of the government. There ought to be none put at interest. The idea of loaning out the money of the State under the authority of the Constitution, by any officer, is an anomaly in the organic law of any country.

Mr. WHEBBY. What would you do with the reserve?

Mr. DARLINGTON. I would use the reserve to pay the ordinary expenses of the government. I would not put it anywhere except in the treasury. I would not let it go to the brokers, or bankers, or anybody else.

There is something in this, and I beg gentlemen to think of it. This practically results in the question whether it is the true policy of the State of Pennsylvania to loan out her money at all. Why should we have any tax collected beyond what is necessary for the expenses of the government? Why should we provide for the collection of taxes of any kind, beyond the ordinary expenses of the government and the payment of the interest on the public debt, with perhaps a proper allowance for the extinguishment of the debt? Whenever we have what is necessary beyond the ordinary expenses of the government, of which the officers of the State must judge, it should be appropriated to the sinking fund. Now, under the operations of this section, it shall be either invested in the

securities of the United States or of the State. You will have no moneys in the treasury except the proper reserve, and you ought to have none. The true policy of the Convention should be to negative the twelfth section and let the article stand on the eleventh. I do not like the policy of loaning public money to anybody. The abuses of our present system have come from that practice. I know that thousands, and tens of thousands, and hundreds of thousands of dollars, have been loaned from the State Treasury every year, often to irresponsible persons. It is matter of public notoriety that the State Treasurer makes large sums of money by loaning out the public funds in unsafe places.

Does any man know or can any may tell me where the public money is? Calls have been made on the treasury and statements made that affect to tell; but the public know nothing of it. You go to the books and you cannot tell where the money is. It may be with this bank or with that bank, or with this broker or with that broker; but I beg to state what is perfectly well known in my own county, that two gentlemen residing there, of excellent character, obtained from the treasurer, the one ten or twenty thousand dollars and the other five thousand, and loaned it out where fortunately those gentlemen had it repaid, though it was afterwards lost. I object to all that. I object to anybody having money from the treasury. I object to putting such an idea in the Constitution at all, as that the money of the State shall be loaned. We ought to put our condemnation on it most emphatically by refusing to adopt the section or countenancing the idea that it is under any circumstances to be loaned; and then if the State Treasurer, unmindful of his duty, should be found to have speculated with the money in any way, provide that a bill in equity shall call him to account and that it shall be the duty of the Attorney General, the proper officer of the government, to compel the payment into the Treasury of every dollar which he may have unlawfully made out of the public funds.

It is for this reason that I object to this section altogether and sincerely hope that it may be negated.

Mr. C. A. BLACK. I move as an amendment to the amendment, to strike out in the second line "or in loans upon the security of" and insert "by investment in."

Mr. BROOMALL. I have no objection to that.

Mr. ALRICKS. I accept that modification of my amendment.

The PRESIDENT *pro tem*. The amendment to the amendment is accepted by the mover of the amendment, so as to make the section read:

"All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State by investment upon the bonds of the United States or of this State."

Mr. HOWARD. Mr. President: I am opposed to this amendment. The amendment binds the State Treasurer, as I understand, to invest absolutely in the bonds of the United States government or of the State. It forbids him loaning upon call upon the security of the bonds of the United States or of the State. The object of the amendment is to forbid him from making temporary loans on the collateral security of the federal government or of the State. This amendment ought not to prevail; and why not? We all know that it has been the practice of State Treasurers to loan the public money continually without any security at all, and put the profits thereof in their breeches-pockets; and we have no security at all for this money but the bond of the State Treasurer himself and his sureties. Now, the section as it stands proposes that if the State Treasurer loans this money as it has been generally loaned, to banks and savings funds institutions and his friends throughout the Commonwealth, at present without any security to the Commonwealth, he shall hereafter take such collaterals as the bonds of the United States government or the bonds of the State, and the interest, instead of going into the pockets of himself or his friends, will go into the State Treasury, where it belongs.

This is not the first time that the people have tried to make a fight on this question to compel the State Treasurer to make a deposit of this money for the interest of the State and not for himself. He does not make deposits at any place without getting more or less, according to the private contract that is made.

Why is it that the State Treasurer is to be limited to an absolute investment, that he should not be permitted to loan the funds of the State upon the highest possible security that can be given in temporary loans? Of course the Legislature would provide that when these loans are made they shall be call loans,

just as the funds are now loaned. There now is in the sinking fund about \$3,000,000 in money, and it does not get much, if any, below that amount. The use of this large fund is now and in the past has been for the benefit of the State Treasurer and his friends! It is a shame that the great Commonwealth of Pennsylvania should be compelled by law to keep a sinking fund at all. She ought to be able to pay her debts, and she is able to assess taxes annually to meet all her obligations, and she does not need a sinking fund for any honest purpose. This fund is as good as a dozen banks for the State Treasurer and his friends, who want their hands in the public funds up to the elbow and are not satisfied—they want to go clear up to the shoulders. Men who make sinking funds make them generally where there is no necessity for them, for the simple reason that heretofore an innocent and gullible public have allowed the funds in them to be used by the managers. That is the principle reason for keeping up the sinking fund of the Commonwealth. It would be better to sell the bonds given for the public works and clean it out, and never have another *sinking* fund. Just about the amount of \$3,000,000 annually has been kept there for the State Treasurer to bank upon, loan it about the Commonwealth without any security; and when, as by this section, the highest security is demanded for it, gentlemen say, "No, it shall not be loaned upon call under such restrictions as may be provided by law upon the best security. What will be the result? The State Treasurer will say, "I cannot invest; bonds are too high; it would not be prudent to buy in the market at present." The result would be that the money would still be deposited in banks throughout the Commonwealth, and he would still put the interest in his pocket as usual, or parcel it among his friends. If he was compelled by law to either invest it or to loan it on call upon good security, the Commonwealth would get the benefit of it.

Mr. C. A. BLACK. I find that my amendment will not answer the purpose, and I ask leave to withdraw it.

The PRESIDENT *pro tem*. The amendment to the amendment is withdrawn.

Mr. ALRICKS. I do not intend that a false impression shall go forth, that those who are in favor of this amendment wish the State Treasurer to make money off the Commonwealth's principal funds.

By no means, sir. I do not intend, however, that the State Treasurer should be the broker of the Commonwealth. The motion that is made here is simply that there shall be no trading in the funds of the Commonwealth.

Now, we all know that heretofore these funds have been used for electioneering purposes. It is proper that the money of the Commonwealth should be put out at interest, it is said. My own apprehension is that it should not be invested in the bonds of the United States, but that at once the Commonwealth, through her State Treasurer, should buy up the bonds of the State, and thus pay our own debt, and that would be accomplished if you would strike out the words, "in the bonds of the United States." But the motion that I made was this, to strike out the words, "loans upon the securities," and that this money should be invested in the bonds of the United States, and leave it be directly invested in the bonds of the United States. They always have a market value. If the State Treasurer plays false you have nothing to do but look at your prices current, and you can tell whether he was playing false or not. You can ascertain whether he was doing justice to the Commonwealth he represented or not.

We are all here, I believe, anxious to attain the same object, and my own opinion is that the better way to attain it would be to strike out the whole sentence and require him to make the investment in the bonds of the State of Pennsylvania, because then it would be paying our own debt; but as the section now stands, I apprehend that it is proper that we strike out the words "loans on the securities," and leave him to make the investments on bonds of the United States and this State; because by reference to the prices current the people would know whether he was dealing fairly or not.

Mr. HARRY WHITE. I wish to offer an amendment to the amendment now offered by the delegate from Greene.

SEVERAL DELEGATES. He withdrew it.

The PRESIDENT *pro tem*. It was accepted by the delegate from Dauphin, and is now the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. HARRY WHITE. I wish to modify that amendment, and I call the attention of delegates to it because there is very much force in what fell from the lips of the delegate from Centre. The delegate from Greene moved to strike out "or any

loans upon," and insert "by investment in." I understand that is the amendment. Now, I move to strike out the words "investment in" and add the words "secured by." Then it will read :

"All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, secured by bonds of the United States or of this State."

Now, one word. I do not want to occupy time for the sake of occupying time. The delegate from Centre said with great force that the treasury of a great Commonwealth should not be turned into a broker's office. As this section would confine it with the words, "or in loans upon the security," you will find a merchant here and an enterprising man there with bonds going to the State Treasurer and trafficking with him for a loan and securing it upon United States or State bonds for the benefit of the State if you please. I submit that no business man of this Convention, desirous of knowing anything about the management of the State treasury, would desire to have that thing done. We want to administer some reform to the so-called abuses in the management of the Treasury. If we do, how is it to be done? It is certainly wanted. We must have some reserve on hand. There must be some fund which is not used in the current expenses of the government. What shall be done with it? We are not to keep it in the vaults of the treasury. Shall we keep it in some bank? No, certainly, but loan it all around. If it is to be kept in the bank, it ought to be kept there for the benefit of the State and not for the benefit of the State Treasurer.

That is what I propose, and I sympathise with a proposition of that kind. I submit that we ought to make our language here so specific that it cannot be misinterpreted hereafter. And if I am allowed to do so, and if this amendment is adopted, I will offer an amendment, as follows: "In such manner as shall be provided by law;" and that will require the Legislature to pass a statute which will probably authorize the reception of bids from responsible banking institutions and require the State Treasurer to deposit the money with that institution which will pay the highest rate of interest. That is another matter. That is the purpose that I have in view in striking out the words "or in loans upon," and requiring the section only to read. "All moneys of the State shall, as far as possi-

ble, be kept at interest for the benefit of the State, secured by the bonds of the United States or of the State." That is the purpose of my amendment.

Mr. BROOMALL. The amendment that the gentleman suggests does not change the idea at all; it changes simply the phraseology, and I think not for the better. His second idea of adding to the section, "and the Legislature shall provide by law for carrying out this section," I entirely approve, and I will offer it myself, if he does not; but I trust his present amendment will not be adopted.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Indiana to the amendment of the delegate from Dauphin.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Dauphin, (Mr. Alricks,) which will be read.

The CLERK. It is to strike out the words, "or in loans upon the security of" and insert the words "by investment in," so as to read: "All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State by investment in the bonds of the United States or of this State."

Mr. BROOMALL. That will force the State government into the broker's market and allow the brokers to make a corner upon it both in buying and selling; and, besides that, it is better that we should allow them to make temporary loans on temporary bonds, even if we allow them to make permanent loans on permanent bonds in the manner spoken of by the gentleman. The section has reference to temporary loans.

The amendment was rejected, there being on a division ayes, twenty-nine, less than a majority of a quorum.

Mr. BROOMALL. Now I move to amend by adding at the end of it "and the Legislature shall provide by law for carrying out this section."

Mr. HARRY WHITE. Insert after the word "State" in the third line the words "in such manner as shall be provided by law."

Mr. BROOMALL. Very well, I accept that.

The amendment was agreed to.

Mr. BROOMALL. One other amendment. I move to insert after the word "the" and before "benefit" in the second line, at the instance of some delegates

here, who prefer it, the word "sole" so as to read "for the sole benefit of the State."

The amendment was agreed to.

Mr. M'MURRAY. I move to amend by inserting in the sixth line, after the word "loaned," the words "and at what rates of interest," so as to read, "a statement showing the amount of all such moneys, where the same are deposited or loaned, and at what rates of interest, and on what security," &c.

Mr. BROOMALL. That is right.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. DARLINGTON. I ask for the yeas and nays.

Mr. CURTIN. I second the call.

The question was taken by yeas and nays with the following result :

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Edwards, Elliott, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hazzard, Horton, Howard, Hunsicker, Kaine, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, M'Murray, Mann, Mantor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith H. G., Smith, Henry W., Stanton, Stewart, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, J. W. F., Woodward and Wright—83.

N A Y S .

Messrs. Addicks, Andrews, Bannan, Clark, Curtin, Darlington, DeFrance, Ellis, Hall, Porter, Struthers and White, Harry—12.

So the section was agreed to.

ABSENT.—Messrs. Ainey, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Carey, Cassidy, Collins, Craig, Dallas, Hanna, Hay, Hemphill, Heverin, Knight, Lamberton, Landis, Lear, Littleton, MacVaugh, M'Culloch, Metzger, Minor, Mott, Newlin, Palmer, G. W., Read, John R., Ross, Runk, Sharpe, Simpson,

Smith, Wm. H., Temple, White, David N., Worrell and Meredith, *President*—38.

Mr. S. A. PURVIANCE. I offer the following, to come in after the twelfth section :

SECTION 13. The Legislature shall not pass any law authorizing the levying of a special tax upon one class of taxable property for the special purpose of benefiting another class.

I desire to say but a few words in explanation of this amendment. It is intended to meet a class of taxation which has grown into a very great abuse, which is exceedingly obnoxious to the people, and I may say oppressive. The Legislature has, from time to time, passed laws authorizing the levy of a special tax upon a class, the proceeds of which to be applied to the support of another class; as, for instance, the levy of a tax upon unseated lands in a county for the purpose of building a bridge over a certain designated stream; or a levy of a tax upon the lands of non-resident owners for the purpose of building a town hall; or, as in a case to which I refer, the levy of a tax on the saloon keepers of the town of Johnstown for the purpose of maintaining a police force; or, as in a case in Bradford county, the levy of a tax upon the people of Towanda of \$500, exceeding the amount of taxes anywhere else in the county. Opposition was made to the assessment of that tax on the ground that it was unequal, unjust and unconstitutional; and yet the Supreme Court decided that that tax was within the power of the Legislature to create, although it was special in its nature. In the case of the levy of a tax in Johnstown on the saloon keepers, for the purpose of maintaining a police force, it was ruled that that was right and proper, because the police force was to some extent a necessary consequence of the keeping of those saloons, which, to say the least, was rather far-fetched and rather illogical.

Now, sir, I can give you another case, a case where the Legislature have passed a law authorizing the levy of a tax upon marine, fire and life insurance companies, for the purpose of maintaining a fire department. While it may be seen that marine and fire insurance companies may have some relation to the maintenance of a fire department, I think it would be a difficult matter for any one to see that a life insurance company has any connection with any such department. So, sir, his Honor Judge Woodward refreshes

my recollection of a case involving an important principle that came up from Lehigh county, where the iron ore of a certain township was hauled over a certain road. Some one came to Harrisburg for the passage of a special law authorizing, not a tax, because "tax" it seems was not named in the bill at all, but authorizing the collection of twenty-five cents a ton on every ton of ore that was hauled over that road, to be collected as other debts were collected before a justice of the peace, and hence that community, although the sum was small, was singled out for the operation of that special law.

I think it is right and proper that we should prohibit the Legislature in future from passing any law of that kind; for when a law of that sort is passed, however oppressive it may be, it is not difficult to find in the argument of ingenious counsel some reason for connecting it with the benefit of the public. Therefore it seems to me that it demands at our hands an entire prohibition of the passage of any such law. In the article on legislation there is no prohibition that would cover this, and therefore a general law might be passed authorizing just such a thing as that, which we ought to prevent. After having the attention of this Convention and other gentlemen have addressed the House in opposition if they desire to do so, I shall call for the yeas and nays on this section, which I conceive to be of very great importance.

I am aware of the fact that special laws of this sort have been passed and made applicable to the county of Allegheny, and in some instances I believe have worked very well, such as a tax on saloon-keepers to assist in the support of the work-house in that county, but I appeal to the Convention whether there is any sense of justice in that class of special enactments which, if unrestrained, may lead to most ruinous oppression upon any class of our citizens which might be singled out for that purpose by the Legislature.

Mr. MACCONNELL. Mr. President: I do hope this Convention will not pass the amendment now offered.

The delegate offering it referred to an act of the Legislature in regard to Allegheny county, with respect to vagrants made by liquor sellers, at least principally so, and the Legislature authorized the laying of a tax upon the liquor sellers of the county to be applied to the building of the workhouse for those vagrants. The legislation was in this shape: It increased

largely the license fee and provided that three-fourths of it should be applied to the building of the work-house. It has been so applied for years, and the sum has almost paid the whole expenses of that house, if my information is correct.

The proposition, as I understand my colleague, is to strike at that law. Why do it? Why cut off the burdens upon the liquor sellers of Johnstown to support in part the police force which is made necessary by the carrying on of their nefarious business? Why throw upon the people of Allegheny county the burden of paying the balance that they have unpaid for building their work-house, a work-house made necessary by these very liquor sellers? Why throw that burden on the rest of the people instead of on the liquor sellers? It seems to me a most extraordinary proposition.

I do hope that the gentleman will not insist upon the amendment, but if he does I do hope the Convention will not agree to it.

Mr. WOODWARD. Mr. President: I concur with the gentleman from Allegheny (Mr. S. A. Purviance) in the spirit of the amendment which he has proposed. I did not attend particularly to the phraseology; I do not know that it is sufficiently guarded; but I do conceive that the purpose and object which the amendment has in view is very necessary and proper.

Mr. President, this business of legislating special taxes on persons and communities has come to be an intolerable disgrace to Pennsylvania; and the vacillation of the Supreme Court in sustaining some and condemning others is as remarkable as the fluctuations of the Legislature. The gentleman who moves this amendment has referred to many of the cases, some of which are very striking. There are others which he did not mention. There is Hemphill's appeal, for instance, where the Supreme Court held that it was unconstitutional to tax a citizen for a street improved for the benefit of the whole community. You may compel a man to pay for many things relative to gas pipes and water pipes about his premises, but when you impose a tax on him for making streets for the benefit of the public, the doctrine of the Supreme Court in Hemphill's appeal is that the law is unconstitutional.

Per contra came the Saucon township case, in Lehigh county, in which act of

Assembly the word "taxation" or "assessment" or any similar word does not occur from beginning to end. It does not appear to have been the exercise of the taxing power on the part of the Legislature at all. They do not appear to have suspected that it imposed a tax on anybody; but they created the relation of debtor and creditor between the contracting parties. A contract is made. A land owner, a farmer having iron ore on his farm, leases it for twenty years at so much per ton, a written lease which constitutes a contract between the parties. The Legislature then comes in and passes an act declaring that every load of ore that goes over the road in that township shall subject that farmer to an action before a justice of the peace for the recovery of the assessment of twenty-five cents a load, or whatever it is, in the form in which debts of like amount are recoverable.

Observe, it is not the assessment of a tax; it is the creation of a debt against that farmer; and the Legislature might have required him to pay the supervisor of the township more money than he had stipulated to receive from the lessee of his iron ore mine. It did not in point of fact amount to an utter confiscation of his rent; but it took a large part of it without his consent after the lease was made, and might, upon the same principle, have taken the whole. It was a legislative interference between contracting parties after their lease was made, the word "tax" not being in the law, as I said, but turning the judiciary of the Commonwealth into tax-gatherers, and making taxes collectable not by assessments in the ordinary mode, but before a justice of the peace, and going possibly from the justice of the peace to the common pleas, and from the common pleas to the Supreme Court, and from the Supreme Court of the State to the Supreme Court of the United States. This was the principle introduced by that act of Assembly. That case came before our Supreme Court some time after the argument of Hemphill's appeal to which I have alluded, and you may or you may not believe it, Mr. President, but the fact is so; the Supreme Court held that act of Assembly to be constitutional legislation! Judge Agnew delivered a dissenting opinion which does him infinite honor, for he declared from his place on the bench that the law violated principles of the Bill of Rights, and of the liberties of the citizens of Pennsylvania. There stands that monstrous decision sus-

taining that most monstrous law, subverting, in the words of judge Agnew, the fundamental principles of the Bill of Rights.

I think I speak correctly when I say that the very week before this case from Lehigh county was argued in the Supreme Court, a case from Wilkesbarre came before them where the Legislature had authorized the city of Wilkesbarre to tax hotel landlords, opera-house keepers, restaurant keepers, lawyers, and other business men to support the city of Wilkesbarre. The constitutionality of that legislation was assailed before the Supreme Court of this State; and about a week after they had decided the Saucun township case they decided that that legislation was unconstitutional and they reversed the court in Luzerne county that had sustained it. See how the court goes on oscillating from one side to the other like a pendulum of a clock.

The PRESIDENT *pro tem*. I have seen them at that often. [Laughter.]

MR. WOODWARD. Formerly you did not see so much of it. [Laughter.]

MR. PRESIDENT, the Legislature no doubt intend to do everything that is right, and of course the Supreme Court intends to do everything that is right; but I have sometimes regretted that we had a written Constitution, and have thought it might be better if we were as they are in Great Britain, without a written Constitution, and let the Constitution be what the Parliament and the courts declare it to be; then we should not have these doubts. But we have undertaken to define and secure certain fundamental principles. Now, amongst them, I suppose there is none more valuable than that one which gives to the Legislature the exclusive power of taxation; and therefore I voted in this House against the proposition to abridge and cripple that power in behalf of manufacturing corporations. I am not willing to cripple the taxing power in the hands of the Legislature. I hold it to be absolute, and so long as they confine themselves to legislation that is of the nature of taxation, I hold that there is no constitutional limitation upon their power at all, and I am not willing to impose any. It is essential to the life of the government that this large power should exist somewhere, and in all free governments it does exist in the legislative department. There I want to leave it. Therefore I voted against a very captivating proposition

this morning in vindication of this principle.

I have no thought of disturbing it now; but when this sound principle is so capriciously and ridiculously applied, as it is, from time to time, in the legislation that my friend from Allegheny strikes at by this amendment, then I say we ought to stop; we ought to prevent this kind of legislation, compel the Legislature to exercise their unquestionable and unqualified power over taxation as legislation ought to be, general for the whole State, instead of picking out this case and that case and the other case, and assessing upon it enormous and intolerable burdens, confiscating a farmer's rights under a lease, as was done in Lehigh county under legislation for taxation purposes, when I tell you, (I speak advisedly,) that from the beginning to the end of that enactment the word "tax" or the word "assess" does not occur; there is no such thought in the act of the Legislature.

The PRESIDENT *pro tem*. The gentleman's time has expired.

SEVERAL MEMBERS. Go on.

Mr. WOODWARD. I do not care to go on. ("Proceed.") I rose simply to support the amendment. I did not attend carefully to the phraseology. I think perhaps the phraseology ought to be modified; but the object at which this amendment is aimed is a noble and a worthy object. It may be very well for us all to consider it carefully. I have no great respect for liquor sellers or for liquor selling; all the liquor I have ever had, I have given away. [Laughter.] I never sold any, and God forbid I ever should. I have no great respect for liquor sellers. I do not believe men who make a living by selling a dangerous element to their neighbors are the most deserving class; but then what am I to think of the argument of my friend from Allegheny, (Mr. MacConnell,) that we are to justify this vicious legislation for the sake of punishing liquor-sellers, that we should charge the liquor-sellers with a class of burdens that do not belong to them because they are outlaws! I suppose that is the idea. We are to impose upon them an unreasonable share of taxes for that reason! I say that is not a correct principle. The selling of liquor may be a great evil; but it is a very poor principle to legalize this thing and then come and complain that because of the evils this legalized traffic occasions, we will put the duty of supporting the police of Johnstown on it; we will

put the duty of supporting the city of Wilkesbarre on these liquor-sellers and these lawyers, for that was the legislation there. [Laughter.] That is very faulty. It is no apology for such legislation that liquor selling is a mean business.

This legislation is either according to the theory of our Constitution or it is a gross violation of it. I maintain that it is a gross violation of the first principles of our Constitution and of that unqualified power to legislate for taxation which our Constitution gives to the Legislature. I will never question the power of the Legislature so long as they exercise it in the spirit of the Constitution, as a power to be exercised over the whole community for the good of the whole community, for the oppression, if you please, of the whole community; let the whole community be burdened alike. As long as the Legislature exercise their authority in that way, I stand here to defend it; but in this fragmentary, casual, unfair, spiteful mode of legislating personally against this class and then that class, I do not know what my friend from Allegheny may think of such legislation as that, but I am opposed to all that as being violations instead of an exercise of the power of legislation which the Constitution confers upon the Legislature.

Now, I believe the amendment is intended to cut up by the roots and stop that kind of vicious legislation; and if it is I mean to vote and I hope the House will vote for it.

Mr. BROOMALL. I would ask the gentleman from Allegheny to withdraw his amendment for a moment while we offer a section of the old Constitution that was accidentally left out.

Mr. S. A. PURVIANCE. I withdraw my amendment for the present.

Mr. BROOMALL. The amendment will be offered by the gentleman from Allegheny (Mr. T. H. B. Patterson.)

Mr. T. H. B. PATTERSON. I offer the following amendment as a new section:

"SECTION —. The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough or township, unless such debt shall have been contracted to enable the State to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness."

I will state to the Convention that this is the sixth section of the article on the public debt in the present Constitu-

tion. It is in the identical language of that section with the exception of leaving out the words "or of any corporation or association," which are provided for in the seventh section of the present article.

The amendment was agreed to.

Mr. BUCKALEW. Now I ask that that come in after section nine, so as to come in its regular order. ["Yes." "Yes."]

The PRESIDENT *pro tem.* No objection is made and it will be placed after section nine.

Mr. S. A. PURVIANCE. I now renew my amendment, which is to add as an additional section the following:

"The Legislature shall not pass any law authorizing the levy of a special tax upon one class of taxable property for the special purpose of benefiting another class."

The amendment was agreed to.

The PRESIDENT *pro tem.* The article is concluded.

Mr. BROOMALL. I move to refer it to the Committee on Revision and Adjustment.

The motion was agreed to.

FUTURE AMENDMENTS.

Mr. LILLY. I move that the Convention proceed to the consideration on second reading of the article on Future Amendments, being No. 16.

The motion was agreed to, and the Convention proceeded to the consideration on second reading of the article on Future Amendments, reported from the committee of the whole, which was read as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their Journals, with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next election in at least two newspapers in every county in which two newspapers shall be published; and if in the Legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be sub-

mitted to the people in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of the electors of this State voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years: *Provided*, that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

Mr. FUNCK. In the eighteenth and nineteenth lines I move to strike out the words, "but no amendment or amendments shall be submitted to the people oftener than once in five years," so as to leave the section stand exactly as it stands in the Constitution now.

No inconvenience has been felt from the provision of the old Constitution. No amendments adopted by the Legislature have been prejudicial to the public interests, but, on the contrary, it is desirable that this power should be retained by the Legislature, and particularly so at this time, because we are about framing an amended Constitution to be submitted to the people for their ratification. I have no doubt before we have much practice under the new Constitution if adopted by the people some defects will be discovered which we supposed had been provided against. If the Legislature then has the power to submit additional amendments so as to cover those defects it will prove beneficial to the public. I therefore hope that no change will be made in this section, but that it will be suffered to remain exactly as it stands in the old Constitution.

Mr. J. M. BAILEY. I think the gentleman has inadvertently fallen into an error. This five years clause is now in the Constitution exactly as it is in this section and I, with him, hope that it will remain just as it is in the present constitution.

Mr. FUNCK. Yes, I had overlooked that clause in the Constitution. I would prefer to see it left out, so as to give the Legislature and the people complete control over the organic law of the State; then if amendments are hereafter found to be necessary they can from time to time be

promptly made and submitted to the people.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lebanon.

The amendment was rejected.

Mr. BUCKALEW. I move to insert the word "general" before "election," in the seventh line, so as to read, "before the next general election." After the amendments are agreed to by the Legislature, there may be a spring election, and it is obviously intended that the matter should go over until the next year, until the next general election.

The amendment was agreed to.

Mr. GUTHRIE. I propose to amend this section, by adding in the seventh line, after the word "newspapers," the words "one of each political party."

SEVERAL DELEGATES. No politics in the Constitution.

Mr. GUTHRIE. It is suggested to me to modify by saying "of different political parties," and I accept that modification.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny (Mr. Guthrie) as modified.

Mr. GUTHRIE. I am as much opposed to the introduction of partisan politics into the Constitution as any gentleman on this floor; but I think this is a necessary provision here. In my county, as I presume it is in a great many other counties in this State with newspapers of both sides published there, only one side can see what publications are made by authority of law. I think it is nothing but fair that both sides should have this publication, so that the people may all get to see what is proposed to them. I think it is fair to both parties and should be provided for.

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. GIBSON. I should like to suggest to the gentleman from Allegheny a modification of this kind: "In two newspapers to be selected by the board of commissioners, to be designated by a unanimous vote of the board of commissioners," because one commissioner would be of the minority party. ["No." "No."]

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. J. PRICE WETHERILL. I should like to ask the gentleman from Allegheny one question before the yeas and nays are taken. There may by three political

parties in the State, certainly within the next thirty years; and I should like to know how he is going to designate them.

Mr. EDWARDS. In some of the counties there may not be any newspaper at all.

Mr. J. M. BAILEY. I think this matter may be arranged. I am in entire sympathy with the object which the gentleman Allegheny (Mr. Guthrie) wishes to accomplish, and I therefore would suggest to him as better language, that instead of recognizing any political party, he use the words: "In two newspapers having the largest circulation in each county." That will meet the same object. ["No." "No."]

Mr. LILLY. I hope it will not be modified at all.

Mr. GUTHRIE. I should like to modify it by striking out, in the eighth line, the word "two" before "newspapers," and inserting "such."

The PRESIDENT *pro tem*. Does the delegate withdraw his prior amendment?

Mr. GUTHRIE. No, sir; I merely ask to add this to it.

Mr. CLARK. I ask that the section be read as it is proposed to be amended.

The PRESIDENT *pro tem*. The Clerk will read that part of the section.

The CLERK read as follows:

"And the Secretary of the Commonwealth shall cause the same to be published three months before the next election in at least two newspapers of different political parties in every county in which such newspapers shall be published."

Mr. STANTON. If the gentleman desires political parties to be represented, had he not better mention them? Here is the Temperance party, the Know Nothing party, the Democratic party, the Republican party, and the Liberal and Reform party. Let him designate what he wants.

Mr. DARLINGTON. I merely want to suggest that ever since this mode of amendment was adopted, thirty-five years ago, there have been several amendments to the Constitution, and so far as I have ever heard never the slightest difficulty about everybody getting to understand precisely what was before the people, having gone twice before the Legislature in two successive sessions and then published prior to a general election. Nobody can suggest that any one has been left in ignorance of what was to be done, and the publication has been a mere matter of

whether you would favor one political party or another in each particular county. I think we might leave that entirely to the section as it stand.

MR. CORSON. Mr. President: It looks to me very much as if this amendment was about to carry, and as I do not exactly like the wording of it, I would suggest to the gentleman from Allegheny that he couch it in this language:

"Published three months before the next election in two such newspapers in every county, where two are published, as will best inform the political divisions of the people."

That mentions no party whatever, and that will compel the powers that be to select those papers which are the exponents of the two greatest rivals for popular favor.

I move to amend the amendment by striking it out and inserting after the word "two," in the seventh line, the words "such newspapers as will best inform the political divisions of the people."

MR. GUTHRIE. I will accept that, if I understand it rightly.

The question being put, a division was called for and the ayes were forty-three.

MR. EDWARDS. I ask for the yeas and nays.

More than ten rising to second the call, the question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Bid-
dle, Bigler, Black, Charles A., Boyd,
Brown, Buckalew, Bullitt, Clark, Coch-
ran, Corson, Cronmiller, Curry, Davis,
De France, Dodd, Dunning, Elliott, Ellis,
Ewing, Fell, Fulton, Gibson, Gilpin,
Green, Guthrie, Hall, Hazzard, Horton,
Lilly, Long, M'Camant, M'Murray,
Mitchell, Niles, Parsons, Patterson, D.W.,
Patterson, T. H. B., Patton, Porter, Pur-
man, Purviance, Jno. N., Purviance,
Samuel A., Reed, Andrew, Smith, H. G.,
Stanton, Stewart, Wetherill, John Price,
and Woodward—53.

N A Y S .

Messrs. Addicks, Baily, (Perry,) Ban-
nan, Bowman, Calvin, Church, Curtin,
Darlington, Edwards, Finney, Funck,
Howard, Lawrence, MacConnell, M'Clean,
Mann, Mantor, Palmer, H. W., Pughe,
Reynolds, Rooke, Russell, Smith, Henry
W., Turrell, Van Reed, Walker, Wethe-

rill, J. M., Wherry, White, Harry and
White, J. W. F.—30.

So the amendment was agreed to.

ABSENT. — Messrs. Ainey, Andrews,
Baker, Barclay, Bardsley, Bartholomew,
Beebe, Black, J. S., Brodhead, Broomall,
Campbell, Carey, Carter, Cassidy, Collins,
Corbett Craig, Cuyler, Dallas, Hanna,
Harvey, Hay, Hemphill, Heverin, Hun-
sicker, Kaine, Knight, Lamberton, Lan-
dis, Lear, Littleton, MacVeagh, M'Cul-
loch, Metzger, Minor, Mott, Newlin,
Palmer, G. W., Read, John R., Ross,
Runk, Sharpe, Simpson, Smith, Wm. H.,
Struthers, Temple, White, David N., Wor-
rell, Wright and Meredith, *President*—50.

MR. STEWART. I move to amend, by striking out all after the word "the," in the thirteenth line, and inserting the following:

"Qualified electors of the State, in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall pre-
scribe; and if such amendment or amend-
ments shall be approved and ratified by a
majority of those voting on such amend-
ment or amendments, shall become a part
of the Constitution; but no amendment
or amendments shall be submitted oftener
than once in five years: *Provided*, That
when two or more amendments shall be
submitted, they may be voted upon sepa-
rately."

It will be observed that the amendment only proposes to change the phraseology of this section. I think as it stands it is objectionable because in one place we have the amendment submitted to "the people" and then again we have it sub-
mitted to "the qualified electors." This
amendment, if adopted, will preserve
the harmony of the whole section, and I
think it ought to be done. It does not
change a single idea embodied in the lan-
guage, but does change, I think to ad-
vantage, the phraseology of the section.

MR. TURRELL. If I rightly understood the reading it does change the substance of this matter very materially. By this it is provided that "if the people shall ap-
prove such amendment or amendments
by a majority of the electors of this State
voting thereon." That part of it, if I un-
derstood the gentleman, is left out, and
it is only a majority of those voting upon
it by his amendment.

MR. STEWART. There will none vote upon it except qualified electors of the State.

Mr. TURRELL. But this requires that a majority of the voters of the State shall vote for it. Yours only requires a majority of those voting for it.

Mr. GREEN and others. Oh no, only a majority of those voting thereon.

Mr. STEWART. I ask that the Clerk read my amendment.

Mr. TURRELL. I think I am mistaken on reading the language a second time.

The CLERK read the amendment.

Mr. BUCKALEW. I think there is another material change in the word "may," which is substituted for the word "shall" by the amendment of the gentleman from Franklin.

Mr. STEWART. I will modify it, by striking out "may" and inserting "shall" in the proviso at the close.

Mr. MANN. The objection made by the gentleman from Susquehanna is certainly sustained. Under the proposed amendment, if but twenty thousand voters vote on an amendment and eleven thousand of them are for it, it will carry. Eleven thousand votes out of seven hundred thousand will carry an amendment under the proposition of the gentleman from Franklin!

SEVERAL DELEGATES. It is so under the section.

Mr. ARMSTRONG. In both these sections as drafted, the words are used "approved and ratified." In this connection the latter is mere tautology; the word "approved" covers the very idea. The words "and ratified," I therefore move to strike out.

Mr. STEWART. I agree with the gentleman; I accept the modification.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin as modified.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is on the section as amended.

The section as amended was agreed to.

Mr. FUNCK. I offer the following additional section, which was reported by the committee:

SECTION —. At the general election to be held in the year one thousand eight hundred and ninety-four, and at the general election held every twentieth year thereafter, the electors of this Commonwealth shall vote for or against a Convention to amend the Constitution; and whenever at any of such elections a majority of the votes cast shall be in favor of such Convention, then the same shall be held; and the Legislature shall provide

for carrying out the provisions of this section.

Mr. President, the purpose of the amendment is to secure to the people of the Commonwealth the control over their fundamental law. Under the old Constitution no amendments could be made to the Constitution unless first proposed by the Legislature, and the people of the State had no right to direct that a Convention should be called. This section now gives to the people the right to vote upon that question once every twenty years, and I think that in a republican form of government like ours, the people should have the control over this matter so that at least to that extent they may have an opportunity of expressing their judgment as to calling a Convention.

The question being put on the amendment, a division was called for.

Mr. FUNCK. I ask for the yeas and nays.

Ten members rose to second the call, and the yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Buckalew, Calvin, Church, Cochran, Ewing, Fulton, Funck, Gibson, Horton, Howard, Lilly, M'Camant, M'Murray, Mann, Mitchell, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Reed, Andrew, Russell, Struthers, Van Reed and Walker—26.

NAYS.

Messrs. Addicks, Alricks, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bigler, Black, Charles A., Bowman, Boyd, Bullitt, Carter, Corson, Cronmiller, Curtin, Darlington, De France, Dodd, Edwards, Elliott, Ellis, Finney, Gilpin, Green, Guthrie, Hall, Harvey, Hazzard, Lawrence, Long, MacConnell, M'Clean, Mantor, Niles, Parsons, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Smith, H. G., Smith, Henry W., Stanton, Stewart, Turrell, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry and White, J. W. F.—52.

So the amendment was rejected.

ABSENT. — Messrs. Ainey, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Biddle, Black, J. S., Brodhead, Broomall, Brown, Campbell, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curry, Cuyler, Dallas, Davis, Dunning, Fell, Hanna, Hay,

Hemphill, Heverin, Hunsicker, Kaine, Knight, Lamberton, Landis, Lear, Littleton, MacVeagh, M'Culloch, Metzger, Minor, Mott, Newlin, Palmer, G. W. Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Temple, White, David N., Woodward, Worrell, Wright and Meredith, *President*—55.

Mr. STANTON. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. CORSON. I hope not.

Mr. STANTON. Why not?

Mr. CORSON. I wish to move a reconsideration of the vote by which we adopted the first section. I voted in the affirmative, but it is too late to make the motion to-day.

SEVERAL DELEGATES. Seven o'clock has arrived.

The PRESIDENT *pro tem*. The hour of seven o'clock having arrived, the Convention stands adjourned until nine o'clock to-morrow morning.

ONE HUNDRED AND TWENTY-NINTH DAY.

FRIDAY, June 27, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday was read.

Mr. DARLINGTON. I find an omission in the Journal, in receiving the invitation of the citizens of Gettysburg. I moved that the thanks of the Convention be tendered to the citizens of Gettysburg, which motion was agreed to; and I move that the Journal be so amended.

The PRESIDENT *pro tem.* The Journal will be so amended.

LEAVES OF ABSENCE.

Mr. J. M. BAILEY asked and obtained leave of absence for Mr. McCulloch for a few days from to-day.

Mr. EDWARDS asked and obtained leave of absence for himself for a few days from to-day.

Mr. STANTON asked and obtained leave of absence for Mr. Mantor for a few days from to-day.

Mr. WHERRY asked and obtained leave of absence for Mr. Parsons for a few days from to-day.

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

Mr. COCHRAN asked and obtained leave of absence for himself for this afternoon, to-morrow and Monday.

Mr. BROOMALL asked and obtained leave of absence for himself for to-morrow.

Mr. BIGLER asked and obtained leave of absence for himself until Tuesday next.

Mr. H. W. PALMER asked and obtained leave of absence for Mr. Davis for a few days from to-day on account of ill-health.

Mr. J. N. PURVIANCE asked and obtained leave of absence for himself for a few days from to-day.

Mr. ELLIS asked and obtained leave of absence for Mr. Hunsicker for to-morrow.

Mr. MACCONNELL asked and obtained leave of absence for Mr. Porter for a few days from to-day.

Mr. STEWART asked and obtained leave of absence for himself from to-morrow until Tuesday.

Mr. BOYD. Would it be in order to ask for leave of absence for all hands? [Laughter.]

The PRESIDENT *pro tem.* Not at this time.

Mr. ALRICKS. I desire to state that a few days ago when Mr. Baker left the House sick, I told him I knew the House would excuse him. He asked me to inform the House of his sickness, in case he did not recover, and as he is still sick I mention that fact now.

The PRESIDENT *pro tem.* Does the gentleman from Dauphin ask leave of absence for the gentleman from Philadelphia?

Mr. ALRICKS. No, sir; I simply desire to mention the fact of his sickness.

Mr. DODD asked and obtained leave of absence for Mr. Corbett for part of to-day and to-morrow.

Mr. DUNNING asked and obtained leave of absence for Mr. Mott for a few days from to-day.

Mr. BUCKALEW asked and obtained leave of absence for himself for to-morrow and Monday.

Mr. CURTIN. Mr. President: We are granting leaves of absence to nearly all of the Convention for to-morrow. I move that when this Convention adjourns to-day, it adjourns to meet on Monday next at ten o'clock.

The PRESIDENT *pro tem.* That is not in order at this time.

Mr. BAER. I ask leave of absence for all the members of this Convention until Tuesday, the eighth day of July. [Laughter.]

Mr. J. W. F. WHITE asked and obtained leave of absence for himself for a few days from to-morrow.

Mr. HARRY WHITE. Mr. President: I desire to return home, and I am not able to get here on Monday without travelling on Sunday. I therefore ask leave of absence from to-day until Tuesday for that purpose.

MANY DELEGATES. No. No.

The PRESIDENT *pro tem.* A gentleman who has scruples about travelling on Sunday asks leave of absence until Tuesday. [Great laughter.]

MANY DELEGATES. No. No.

The PRESIDENT *pro tem.* Oh! let him go. [Renewed laughter.]

Leave was granted.

PROPOSED RECESS.

Mr. HEMPHILL. I offer the following resolution:

Resolved, That when this Convention adjourns to-day, it be to meet on Tuesday, September sixteenth, at eleven o'clock A. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted thirty-four in the affirmative, forty-five in the negative. So the Convention refused to order the resolution to be read a second time.

ADJOURNMENT TO MONDAY.

Mr. CURTIN. I move that when this Convention adjourns this afternoon, it adjourn to meet on Monday morning at the usual hour.

Mr. HALL. I move to amend the motion so as to extend the adjournment to Tuesday, July eighth, at ten o'clock A. M.

Mr. WOODWARD. This proposition to bring members of this Convention back here again on the eighth of July is all wrong. You had better keep them here while you have got them, if you can, and acclimate them to the heat of July. I do not know how to account for it, but this has been the coolest June known in modern times. I, in many respects, have rejoiced at it, because it has enabled us to get along with our work comfortably. If we had had such a June as we had last summer, we could not have lived here. But we have not had it. Then I take it we are to have our hot weather in July, and probably all the more hot because of the coolness of June.

Now, I tell you, Mr. President, and I tell gentlemen around me, that it is not safe to life and health to remain in this city during the month of July. It is true some people do it, and many people die; but what sort of an argument is that to keep us here at the peril of our lives? Is it right for you to imperil your families, your interests, your own lives, by an effort to do business in a high state of the mercury, which you cannot do. If you

were going to do this work right and well by remaining here in July, there would be some sense in it; but you cannot do it. You cannot keep a quorum here; you cannot keep your doors closed: you cannot keep the gentlemen at work who are in the House; you cannot keep this deliberative body engaged in its duties in hot weather.

What was the nervous sensibility which led the gentleman from Indiana (Mr. Harry White) to move to reconsider the resolution to adjourn the other day? It is these mischievous newspapers around us, all of which I observe are praising him and his friends for reconsidering that most sensible resolution. I hear continually from the interior, that the newspapers of Philadelphia give the people no idea of what this Convention is doing, and I defy any man who reads the daily papers of Philadelphia to get a tolerable idea of what is going on in this Convention. Here sit some gentlemen, very respectable reporters, who give slight sketches of what occurs here and what is said; and that is served up in the papers without any connection, without any explanation, without any full exhibition of the question, and it conveys no idea to the people. Now, why do not these papers that are so hurrying of this body through the months of July and August give to the people of Pennsylvania some intelligible account of our proceedings? They have not done it, and because they have not done it, I moved the other day after we had passed our resolution of adjournment, that the Secretary should prepare and publish in every newspaper of the several counties a list of the amendments we had agreed to; and a howl arose against me here from gentlemen behind me as if I had proposed to cut off somebody's head. It was voted down with that sort of vengeance with which many of my propositions are voted down in this House. [Laughter.]

Mr. LILLY. I desire to explain. I want to say to the gentleman that I was in front of him when he offered his ridiculous resolution.

Mr. WOODWARD. I am very sorry there are not two men in this body, so that all these duties should not devolve upon one man, although he be the greatest man who has appeared in modern times. It is unfortunate that there is but one man in this body, and that man hails from Carbon county. I wish there were somebody else. He is the man who knows when to

call the question. He is the man who knows when a proposition is ridiculous. Now, how ridiculous was it that I should propose that the amendments that we had agreed to should be printed in our local county papers so that the people would get some knowledge and idea of them? That was ridiculous in the judgment of the one man in this body. Well, sir, there is no disputing about tastes. I do not know that I shall renew that motion, but I shall vote for it if anybody else makes it. I think it would be a ridiculous thing not to do it and a very wise thing to do it.

Mr. President, do not bring us back here on the eighth day of July. You will not bring me back. I am not speaking for myself.

Mr. CORBETT. We are not going to come back on the eighth; we are going to stay.

Mr. WOODWARD. I have no objection that you should come back if you desire.

Mr. CORBETT. We are not going to come back; we are going to stay.

Mr. WOODWARD. Very well, you can stay, enjoy yourselves and stay; but I advise you, Mr. President, not to come back on the eighth of July. If we adjourn over let us adjourn over until cold weather, adjourn over until October, publish our amendments, with the leave of the gentleman from Carbon—not without—publish our amendments, give the people some idea of what we are doing, and come back here in October and finish our work, and my word for it the work will be better done than if hurried through during this heated term.

Mr. LAWRENCE. Mr. President: I do not know who made this motion, but I do think the gentleman who did it has assumed a responsibility before the people which he will probably regret. I am tired, as you are, of this attempt to adjourn from day to day and from time to time.

I have as high a regard for the gentleman from Philadelphia (Mr. Woodward) as any man in this Convention, but if he or any other man here at home cannot afford to come here from day to day and help us to perform our duties, we will give him leave of absence. The people have sent us here to perform a duty. We trifled away the time in winter when we should have worked. Some of us here have voted against every attempt to adjourn even for a day or for a week. I voted against the adjournment at Harrisburg. I voted against the adjournment

on the first of April, and I have voted steadily against all these adjournments. I think we could have been through our work by this time and before this time if we had all been as vigilant and careful of our time as we should have been. Now, when the weather here is remarkably cool for this season of the year, when we are progressing with our work to the satisfaction, I think, of all the members of this Convention, or nearly all, going along steadily to perform our work from day to day, we are to be met by some motion to adjourn for a brief time or for a longer time.

Now I have lived on a farm. I have driven four, and five, and six-horse teams, and I have always found that one baulky horse in the team pulling back would spoil the rest. Sometimes at the foot of a hill one horse would fall back and directly one or two others pull back and you fail to get up the hill. So it is in this Convention. We have found certain gentlemen here, without naming them, who have all along resisted every effort to go on with the business. They say you cannot finish the business; you must publish these reports in the papers and let the people know what we are doing. My friend from Philadelphia ought to have learned by this time that the people of this State understand what we are doing just about as well as he does.

Mr. WOODWARD. They do not know anything about it.

Mr. LAWRENCE. These reports are published in the papers. I see this from day to day. They know exactly the questions we are considering; they know what the state of affairs is, and they know who is responsible for this trifling with time, and they will hold them responsible for it.

I do not speak with ill temper. I only say this because I believe it to be a duty that we owe to the people to finish our work and submit it to them this fall. If you do not submit it this fall or soon, as was said the other day, you allow these "rings" all over the State who are opposed to it, and members on this floor who have been opposed to reform from the first, to go home among the people and array an opposition against it, which you cannot suppress when you do submit it, just as was done in New York. I say for the sake of the people, for the sake of this Constitution, for the sake of the amendments which we propose to make, and which are important, and admitted to be

important, we ought to go on with our work. If it gets too warm to stay here, if the typhoid fever or the cholera should break out in this city we can adjourn to another place, to Bethlehem, or better, probably, to Williamsport, or some other place. But I beg of gentlemen to let us go on from day to day, not even adjourning on the Fourth of July, or on Saturdays, and let us finish up our work like men, and go home like men to our families.

Mr. H. W. PALMER. I suggest to the mover of this resolution that the select committee on this subject is now ready to report, and their report will put this matter in such an intelligible shape that we can finally dispose of the whole subject.

Mr. CURTIN. I did not expect when I submitted the motion that it would provoke a discussion or take time. I therefore withdraw it.

The PRESIDENT *pro tem*. The motion is withdrawn. Original resolutions are yet in order. If there are none, reports of committees are in order.

RAILROADS AND CANALS.

Mr. COCHRAN. Before passing from the order of original resolutions, I move to make the report of the Committee on Railroads and Canals the special order for next Tuesday morning.

The motion was agreed to.

SUMMER PLACE OF MEETING.

Mr. BRODHEAD. I beg leave to present the report of the select committee appointed to select a place for meeting during the summer.

Mr. LILLY. The order for original resolutions has not been passed. If it has has not, then I insist on the orders of the day.

The PRESIDENT *pro tem*. Reports are in order. The report will be read.

The CLERK read as follows:

The undersigned, committee appointed to select a suitable place for the future sittings of the Convention, respectfully report that invitations have been received from

The borough of Gettysburg.
The borough of Bedford.
The borough of Bethlehem.
The borough of Shippensburg.
The city of Allentown.
The city of Wilkesbarre.

And that we have no doubt the Convention would be abundantly accommodated and entertained at either place. Admonished by the approach of the heat-

ed term and by the failing health of some of the members, the committee are of the opinion that removal to another locality is an absolute necessity if the labors of the Convention are to be completed during the present year; and we therefore recommend that one of the foregoing places be selected in manner following:

Let a vote be had upon the question, to what place shall the Convention adjourn, when each member may vote for one of the places above named, and after each vote the name of the place receiving the lowest number shall be dropped. The name of the place finally receiving a majority of the votes to be inserted in the following resolution:

Resolved, That when the Convention decides to leave Philadelphia it will meet at——.

And in order that the whole subject may be finally disposed of without further loss of time, we recommend that the Convention act upon the following resolution:

Resolved, That when the Convention adjourns on Wednesday, July second, it will be to meet at the place heretofore selected, on Tuesday the eighth of July, at ten A. M.

CHARLES BRODHEAD,
WM. MCLEAN,
H. W. PALMER,
S. L. RUSSELL.

Mr. STANTON. I move to add Philadelphia to the places named.

Mr. H. W. PALMER. This only contemplates removing from Philadelphia. It is a question whether we shall go away at all or not.

The PRESIDENT *pro tem*. The resolution reported by the committee is before the Convention. What action will the Convention take upon it?

Mr. TEMPLE. I move to postpone the consideration of the resolution for the present, and on that question I call for the yeas and nays.

The PRESIDENT *pro tem*. That motion cannot be received until the matter of the second reading of the resolution is disposed of. The question is on proceeding to the second reading and consideration of the resolution attached to the report.

Mr. DARLINGTON and Mr. TEMPLE called for the yeas and nays.

Mr. H. W. PALMER. I ask that the report be read again for information. I do not think the Convention fully comprehend the scope of it. We can settle this ques-

tion on this report understandingly and at once.

The PRESIDENT *pro tem.* The report and the resolution will be read again for information.

Mr. DARLINGTON. Mr. President: We understand it perfectly.

The PRESIDENT *pro tem.* Debate is not in order.

The CLERK again read the report.

The roll was then called.

Mr. HAY [after first voting in the negative.] I desire to change my vote. I vote "yea" for the reason that I think the Convention ought always to proceed to the second reading and consideration of any resolution reported by a committee of this body.

The result was announced, yeas forty-eight, nays fifty-one, as follow:

Y E A S .

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Beebe, Bowman, Brodhead, Buckalew, Cochran, Corbett, Cronmiller, Curtin, Davis, DeFrance, Dunning, Elliott, Ellis, Ewing, Funck, Gibson, Hall, Harvey, Hay, Hazzard, Lamberton, MacConnell, M'Clean, M'Murray, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Reed, Andrew, Runk, Russell, Smith, Henry W., Struthers, Van Reed, Wetherill, J. M., White, J. W. F., Woodward, Worrell and Wright—48.

N A Y S .

Messrs. Baily, (Perry,) Bannan, Bigler, Black, Charles A., Boyd, Broomall, Brown, Bullitt, Calvin, Carey, Carter, Cassidy, Church, Corson, Curry, Dallas, Darlington, Edwards, Fulton, Gilpin, Green, Guthrie, Hemphill, Heverin, Horton, Hunsicker, Kaine, Knight, Lawrence, Lilly, Littleton, Long, Mann, Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reynolds, Rooke, Simpson, Stanton, Stewart, Temple, Turrell, Walker, Wetherill, Jno. Price, Wherry and White, Harry—51.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Campbell, Clark, Collins, Craig, Cuyler, Dodd, Fell, Finney, Hanna, Howard, Landis, Lear, MacVeagh, M'Camant, M'Culloch, Mantor,

Metzger, Minor, Newlin, Palmer, G. W., Ross, Sharpe, Smith, H. G., Smith, Wm. H., White, David N. and Meredith, President—34.

ADJOURNMENT TO MONDAY.

Mr. LILLY. I offer the following resolution:

Resolved, That when this Convention adjourns to-day it will be until Monday next, at ten o'clock A. M.

Mr. LITTLETON. I rise to a point of order. Resolutions are not now in order, and I object to the reception of the resolution.

Mr. HEMPHILL. The time has gone by to present resolutions.

The PRESIDENT *pro tem.* The resolution has been received and read, and the question is on proceeding to its second reading and consideration.

Mr. BAER. I call for the yeas and nays.

Mr. NILES. I second the call.

Y E A S .

Messrs. Armstrong, Bannan, Bigler, Black, Charles A., Brodhead, Broomall, Buckalew, Calvin, Cassidy, Curry, Davis, Dunning, Edwards, Ellis, Ewing, Funck, Gilpin, Green, Guthrie, Hall, Harvey, Howard, Hunsicker, Kaine, Lamberton, Lilly, Long, M'Camant, Mott, Parsons, Patterson, T. H. B., Read, John R., Runk, Smith, Henry W., Stanton, Van Reed, Wetherill, J. M., White, Harry and White, J. W. F.—39.

N A Y S .

Messrs. Achenbach, Alricks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Beebe, Biddle, Bowman, Boyd, Brown, Bullitt, Carey, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curtin, Dallas, Darlington, De France, Elliott, Fulton, Hay, Hazzard, Hemphill, Heverin, Horton, Knight, Lawrence, Littleton, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mitchell, Niles, Palmer, H. W., Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Simpson, Smith, H. G., Stewart, Struthers, Temple, Turrell, Walker, Wetherill, John Price, Wherry, Woodward and Wright—63.

So the Convention refused to proceed to the second reading and consideration of the resolution.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bartholomew, Black, J. S.,

Campbell, Clark, Collins, Craig, Cuyler, Dodd, Fell, Finney, Gibson, Hanna, Landis, Lear, MacVeagh, Mantor, Metzger, Minor, Newlin, Palmer, G. W., Pughe, Ross, Sharpe, Smith, William H., White, David N., Worrell and Meredith, *President*—31.

ADJOURNMENT TO HARRISBURG.

Mr. LAMBERTON. I ask leave to offer a resolution.

On the question of agreeing to the request of Mr. Lamberton, a division was called for, which resulted sixty in the affirmative, and eighteen in the negative.

So the leave was granted and the resolution was read as follows:

Resolved, That when this Convention adjourns to-day it will be to meet at Harrisburg on Tuesday next, at two o'clock P. M.

On the question of proceeding to the second reading and consideration of this resolution the yeas and nays were required by Mr. Edwards and Mr. Hunsicker, and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bannan, Beebe, Bigler, Bowman, Brodhead, Buckalew, Church, Cochran, Corbett, Cronmiller, Curtin, Davis, De France, Elliott, Ellis, Ewing, Fulton, Funck, Gibson, Green, Hall, Harvey, Hazzard, Howard, Hunsicker, Lamberton, Long, M'Clean, M'Murray, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Reed, Andrew, Runk, Russell, Stewart, Struthers, Van Reed, Walker, Wetherill, J. M., Wherry, White, Harry, White, J. W. F. and Woodward—52.

NAYS.

Messrs. Bailly, (Perry,) Bailey, (Huntingdon,) Bardsley, Biddle, Black, Chas. A., Black, J. S., Boyd, Broomall, Brown, Bullitt, Calvin, Carey, Carter, Cassidy, Clark, Corson, Curry, Cuyler, Dallas, Darlington, Dunning, Edwards, Fell, Gilpin, Guthrie, Hanna, Hay, Hemphill, Heverin, Horton, Kaine, Knight, Landis, Lawrence, Lilly, Littleton, MacConnell, M'Camant, Mann, Mott, Newlin, Palmer, G. W., Patterson, D. W., Patton, Porter, Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Rooke, Simpson, Smith, H. G., Smith, Henry W., Stanton, Temple, Turrell, Wetherill, John Price and Wright—69.

So the Convention refused to order the resolution to a second reading.

ABSENT—Messrs. Addicks, Ainey, Baker, Barelay, Bartholomew, Campbell, Collins, Craig, Dodd, Finney, Lear, MacVeagh, M'Culloch, Mantor, Metzger, Minor, Ross, Sharpe, Smith, Wm. H., White, David N., Worrell and Meredith, *President*—32.

OATH OF OFFICE.

Mr. HUNSICKER. Before the regular order of business is commenced, I rise to make a privileged motion. I move to reconsider the vote by which the report of the Committee on Commissions, Offices, Oath of Office and Incompatibility of Office was voted down.

The *PRESIDENT pro tem*. How did the gentleman vote?

Mr. HUNSICKER. In the negative; with the majority.

The *PRESIDENT pro tem*. Is the motion seconded?

Mr. HEVERIN. I second it.

The *PRESIDENT pro tem*. Did the gentleman from Philadelphia vote with the majority?

Mr. HEVERIN. I did.

The motion to reconsider was agreed to.

The *PRESIDENT pro tem*. The article is again before the Convention and will be read.

The CLERK read as follows:

All judicial, State, and county officers shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except necessary and proper expenses authorized by law; nor have I knowingly violated any election law of this Commonwealth or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the salary or fees allowed by law."

The foregoing oath shall be administered.

ed by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken. Any person refusing to take said oath or affirmation, shall forfeit his office; and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury and be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth.

Mr. KATNE. I move now to reconsider the vote by which the words "members of the General Assembly and" were stricken out in the first part of this section.

Mr. JOSEPH BAILY. I second the motion.

Mr. HARRY WHITE. I rise to a point of order. I yesterday rose in my place and moved to strike out those words. That motion was lost. The delegate from Potter (Mr. Mann) voting against it then rose in his place and moved to reconsider, and the Convention reconsidered their action. Inasmuch as that was done, a second reconsideration cannot be had.

Mr. KATNE. The gentleman from Indiana knows infinitely better than that. It is before the body now like any other motion, and no man on this floor knows it better than the gentleman from Indiana.

Mr. HARRY WHITE. My nervous friend from Fayette—

Mr. KATNE. I am not nervous.

Mr. HARRY WHITE. Well, if he will recover his gravity for a moment and do justice to himself, he is much too good a parliamentarian to take such a ridiculous position. If my statement of fact is correct, there is no doubt about the parliamentary rule.

The PRESIDENT *pro tem*. The Chair will state that if the gentleman's facts as stated be the conceded facts of the case, his point of order is well taken.

Mr. ARMSTRONG. It seems to me that, perhaps, the Convention is falling into an error of fact. When the amendment was first rejected, a motion was made to reconsider the vote by which it was lost, and that motion was in order. When the amendment upon a subsequent vote was carried, that became a new vote, and a motion to reconsider that vote is in order.

Mr. MANN. If we vote differently now, can this be considered again? Can we keep on reconsidering every time a vote is different from a former one?

The PRESIDENT *pro tem*. The Chair is of opinion that one reconsideration is all that can be had. The question having been decided, the Chair is bound to sustain the point of order.

Mr. BUCKALEW. I think the gentleman from Fayette will attain his object by moving to insert different words. This is merely a matter of time and management. Hereafter we must make this article and the legislative article correspond in some way. As it is a mere matter of time, I suggest that the gentleman move to insert the words: "Senators and Representatives in the Legislature and." As a matter of course, this article on oaths of office ought to be agreed to. We must agree to some article, or else we shall not have any general oath of office prescribed in the Constitution.

The PRESIDENT *pro tem*. The question now before the House is on the reconsideration moved by the delegate from Fayette, and seconded by the delegate from Perry.

Mr. BUCKALEW. I understood the Chair to rule that motion out of order.

The PRESIDENT *pro tem*. I said if the facts stated by the gentleman from Indiana were conceded to be correct, I should sustain his point of order.

Mr. BUCKALEW. Then, to raise the question, I move to insert at the commencement of the article, the words: "The Senators and Representatives in the Legislature and;"

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia.

Mr. BUCKALEW. As a matter of course, the Committee on Revision, if we adopt this article in some form, will have before them this general oath of office and also the special oath of office provided for members of the Legislature in the legislative article; and my idea is that they shall take the best of the two forms or consolidate the two hereafter. For the time being, as we cannot go back to the legislative article on second reading, I suppose it would be best to retain language of this sort here, leaving the adjustment of it for future consideration.

We must adopt some general oath of office, because we do not retain the present constitutional provision prescribing a

general oath of office. That has dropped out of our work altogether; and unless we adopt some provision for a new general oath of office, we shall not have any provision in the Constitution on the subject.

Mr. COCHRAN. I think it well enough for us to understand to some extent what the powers of the Committee on Revision and Adjustment are. I do not concur with the gentleman from Columbia, that that committee has any right to strike out any sentence or to make any substantial change in any article which is adopted by this Convention. If the Committee on Revision and Adjustment has a power of that kind, they have the whole of our work in their hands and can do with it as they please—a committee of five or seven members. I submit that that view of the case is one which ought not to be adopted. I believe the work of the Committee on Revision and Adjustment is simply a work of arrangement and a work of slight verbal emendation; but to put the whole work of this Convention into the hands of a committee, to strike out and insert as they please, is certainly to repose a power in them which I have never known to be reposed in the hands of any committee in any deliberative body.

Now, sir, we have got, it seems, into this position, that when the report of the Committee on the Legislature was under consideration, we agreed upon a certain obligation for the members of the Legislature to take. It is very unfortunate, indeed, that the gentlemen who had charge of this subject (and I certainly had not charge of it) should have allowed such a specific oath to be placed in that article. It ought to have come into this, and the same oath ought to be applicable to all the public officers of the State. My own view is that, having imposed a special oath upon members of the Legislature, we ought here simply to include in this article the old oath of office which is in the Constitution as it stands; and in order to meet that question when the time comes, I shall move, if there be a prospect of success, to strike out all after the sixth line of this section and leave the oath as it is.

Mr. T. H. B. PATTERSON. When the article on the Legislature was under consideration I called the attention of the Convention to the fact that a specific oath was then being adopted for members of the Legislature alone, and called their attention to the fact that the adoption of such an oath would be in conflict with

the idea of having one general oath for all the officers. The chairman of that committee then stated that he only requested the Convention to adopt that section, and that oath, in order that the Committee on Revision and Adjustment might report as to whether that form of oath or the general form of oath in the article on oaths of office should be adopted.

I submit to the Convention that we ought here to adopt a form of general oath, whatever it may be, such as will apply to all the officers of the Commonwealth, including members of the Legislature. Then the Committee on Revision and Adjustment, when the articles come before them, finding conflicting sections, (although they will have no power to strike out either section, as I fully agree with the gentleman from York,) yet wherever there are conflicting sections in different reports and articles, they would have to call the attention of the Convention to that fact, and suggest that one or other form of section should be adopted; and upon their report the Convention would then, on third reading, be in full possession of all the information, and could then strike out the specific oath in the article on Legislature, and adopt the general form of oath, whatever it should be, that would cover the whole ground.

I submit that it is putting ourselves in a position approximating to absurdity to have two long forms of an oath in our Constitution applying to different classes of officers, and I also submit that it is rather invidious to adopt a long and strict iron-clad oath for members of the Legislature and have no general oath for other officers of the Commonwealth. So I hope the Convention will now adopt some suitable form of oath in the article on oaths of office, sufficiently full to cover the members of the Legislature and every officer, and then when it comes up on the report of the Committee on Revision and Adjustment, we can adjust the matter so as to have our work consistent. I hope the Convention will adopt this view.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia.

Mr. HARRY WHITE. I should be glad if the Convention would just pause a moment to understand the exact situation of this question. When this article was up the other day it included all classes of officers. On my motion, I believe, the words "members of the General Assembly and" were stricken out.

That left the oath as reported by the committee and amended by the Convention to be applicable to all other officers than members of the General Assembly. I voted for that proposition and I shall do so again. I was in favor of striking out the words "members of the General Assembly" for this reason: The character of oath that is designed to be administered to members of the Legislature is different from that administered to other officers of the Commonwealth.

Mr. STEWART. Why?

Mr. HARRY WHITE. I will endeavor to explain. There are some specific matters in relation to votes, in regard to the action of the members of Assembly, which require a different form of oath from that of other officers. I will call your attention to some. I call the attention of delegates to the report of the Committee on the Legislature (No. 2) to be found on your files, which provides:

SECTION 9. Every member of the General Assembly, before he enters on his official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this Commonwealth and will honestly and faithfully discharge the duties of Senator (or Representative) according to the best of my ability; and I do solemnly swear (or affirm) that I have not paid or contributed anything, or made any promise in the nature of a bribe, to corruptly influence, directly or indirectly, any vote at the election at which I was chosen to fill the said office; and I do further solemnly swear (or affirm) that I have not accepted or received, and I will not accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act."

That is a broad, specific and comprehensive oath, specially directed to the duty to be performed by a member of the Legislature, and it is proper that it should be in the legislative article.

Furthermore, it is provided that this oath shall be administered by a judge of the Supreme Court or the president judge of the court of common pleas. The difference is this, and it must be obvious: That you swear a county treasurer, you swear a judge or some other officer; he does not give any vote; he is not called upon to

vote for any appropriation; hence it is necessary if you want to be specific in the character of your oaths, to have different words and different language in the oath administered to members of the Legislature from that of other officers.

That is the reason for my desire to strike out the words "members of the General Assembly," and I think it must be obvious to every delegate here. I am not against a stringent oath for members of the General Assembly. On the contrary, I want the oath to be administered to the members of the General Assembly to meet every evil that is complained of, and I hope it will be corrected by that species of oath.

I am opposed for this reason to the amendment offered by the gentleman from Columbia, and I am in favor of retaining the oath as adopted by the committee of the whole on second reading in the article on the Legislature.

Mr. CALVIN. Mr. President: I desire to call the attention of the members to the difference between the oath as proposed by my friend from Columbia, (Mr. Buckalew,) and the oath adopted in the article on the Legislature, which the gentlemen from Indiana seems to prefer and advocates. In the first, the members of the Legislature, as well as all other officers of the Commonwealth, are required to swear that they have not used any money or other valuable thing to secure either their *nomination* or election; in the oath of the article adopted, and referred to by the gentleman from Indiana, the members of the Legislature are *not* required to swear that they have not used any money or other valuable thing to secure *their nomination*. Thus, whilst all other officers would be required to swear that they have not obtained their nominations by corrupt means, the members of the Legislature would not have to take such oath. Now, certainly this Convention do not desire to make such distinction in favor of the members of the Legislature; and I trust the amendment of the gentleman from Columbia will be adopted.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was agreed to, their being, on a division, ayes sixty-eight, noes eighteen.

The PRESIDENT *pro tem*. The section as amended is now before the Convention.

Mr. CORSON. I move that the Convention now resolve itself into committee of

the whole for the purpose of considering the amendments to this oath and consolidating the two or three oaths we have already adopted. ["No." "No."]

The motion was not agreed to.

Mr. BUCKALEW. There is a slight verbal correction necessary in the form of the oath as it now stands. If the Clerk will turn to about the middle of the oath, he will find the words "nomination, election, or appointment," as substantive parts of the oath. Now, that provision will have to be put in the alternative form so that a part of it will be taken by one class of officers, and in a different form by another. It ought to read "nomination or election," and then the words "or appointment" should be included in a parenthesis or brackets. I move to insert the word "or" between "nomination" and "election," and to include the words "or appointment" in brackets. In the case of an elective officer, the oath will be that he has not paid or contributed money improperly for his nomination or election; and in the case of an appointed officer, it will be that he has not paid money thus improperly for his appointment.

Mr. KATNE. That is all right.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia (Mr. Buckalew.)

The amendment was agreed to, ayes sixty-four, noes not counted.

The PRESIDENT *pro tem*. The question is now on the section as amended.

Mr. HARRY WHITE. I move to amend by inserting the following at the end of the article :

"The oath to members of the Senate and the House of Representatives shall be administered by one of the judges of the Supreme Court or court of common pleas learned in the law, in the hall of the House to which the member is elected.

Mr. KATNE. I have no objection to that.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is now on the section as amended.

Mr. D. W. PATTERSON. I call for the yeas and nays on that question. I want to record my vote against it.

Mr. KNIGHT. I second the call.

The PRESIDENT *pro tem*. The section as amended will be read for information.

The CLERK read as follows:

"Senators and Representatives, and all judicial, State and county officers shall, before entering upon the duties of their

respective offices, take and subscribe the following oath or affirmation :

'I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election, (or appointment,) except necessary and proper expenses expressly authorized by law, nor have I knowingly violated any election law of this Commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law.'

"The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken. Any person refusing to take said oath or affirmation shall forfeit his office, and any person who shall be convicted of having sworn or affirmed falsely or having violated said oath or affirmation, shall be guilty of perjury and be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth.

"The oath to members of the Senate and House of Representatives shall be administered by one of the judges of the Supreme Court, or Court of Common Pleas, learned in the law, in the hall of the House to which the member is elected."

The yeas and nays were required by Mr. D. W. Patterson and Mr. Knight, and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Beebe, Bigler, Black, Charles A., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Carey, Carter, Clark, Corbett, Cronmiller, Cuyler, Dallas, De France, Elliott, Ewing, Finney, Fulton, Funck, Gibson, Green, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Heverin, Horton, Hunsicker,

Kaine, Lamberton, Landis, Lawrence, Long, MacConnell, M'Camant, M'Clean, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Runk, Russell, Smith, H. G., Smith, Henry W., Stewart, Struthers, Temple, Van Reed, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F., Woodward, Worrell and Wright—77.

N A Y S.

Messrs. Biddle, Bowman, Broomall, Cochran, Corson, Darlington, Fell, Gilpin, Hanna, Knight, Lilly, Mann, Patterson, D. W., Porter, Reynolds, Simpson, Turrell and Walker—18.

So the section as amended was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baer, Baker, Barclay, Bartholomew, Black, J. S., Campbell, Cassidy, Church, Collins, Craig, Curry, Curtin, Davis, Dodd, Dunning, Edwards, Ellis, Howard, Lear, Littleton, MacVeagh, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Parsons, Pughe, Ross, Sharpe, Smith, Wm. H., Stanton, Wetherill, J. M., White, David N. and Meredith, *President*—38.

The *PRESIDENT pro tem.* The article is now gone through with.

Mr. LAMBERTON. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. WHERRY. I desire to offer an additional section on behalf of my friend from York (Mr. J. S. Black.)

Mr. HARRY WHITE. I rise to a point of order. The point of order is that the motion to reconsider was merely to reconsider the section which was voted down, and no further sections can be offered as amendments.

Mr. HUNSICKER. There was but one section to that article, and I moved to reconsider the vote by which the article was rejected.

The *PRESIDENT pro tem.* When an article is reconsidered the article is before the Convention and subject to amendment. The point of order the Chair thinks is not well taken. The section offered by the delegate from Cumberland (Mr. Wherry) will be read.

The *CLERK* read the amendment as follows:

"Members of the General Assembly, and all judicial, State and county officers,

shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and obey and defend the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except necessary and proper expenses expressly authorized by law; nor have I knowingly violated any election law of this Commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law."

"I believe myself legally elected without fraud or false return committed by me, or any other person with my consent; that I will not receive gifts or promises, or listen to private solicitation from any candidate or other party having a special interest in my official action or vote, or from the agent of such candidate or party. I will not speak or vote on any subject in which I am or expect to be personally interested, nor make any contract which might bring my private interests in conflict with my public duty."

Mr. NILES. Mr. President: I hope the delegate from Cumberland will explain this oath to us, so that we may understand it.

Mr. WORRELL. I should like to have it explained, too.

Mr. WHERRY. It explains itself.

The amendment was rejected.

Mr. J. M. BAILEY. I offer this amendment as a new section:

"Within twenty days after the adjournment of the General Assembly *sine die*, every member of the House of Representatives and every Senator whose term will expire at the next general election shall take and subscribe before some officer qualified to administer oaths the following oath or affirmation:

"I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability; I have not knowingly been influenced by private solicita-

tion from interested parties or their agents, nor have I received any gift from any such parties; I have not voted or spoken on any matter in which I had or expected to have a private interest; I have not done or willingly permitted to be done any act which would make me guilty of bribery; I have observed the order and forms of legislation as prescribed by the Constitution; and I have not knowingly voted or spoken for any law, bill or resolution which I knew or believed to be inconsistent therewith.'

"The foregoing oath or affirmation shall be filed in the office of the prothonotary of the county in which the Senator or Representative resides; and if any such Senator or Representative shall fail to take and file said oath or affirmation within the time prescribed (unless unavoidably prevented) he shall be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth, and if in taking such oath or affirmation it shall appear that he has knowingly sworn or affirmed falsely he shall be deemed guilty of perjury and also be disqualified as aforesaid."

Mr. J. S. BLACK. Mr. President: I will not make any argument in favor of this section. It has been thoroughly discussed already. Every member of the House has made up his mind long ago. I do not believe that the opinions or sentiments of any member can be changed now. I judge others by myself. I will not surrender my convictions, and I do not expect any other member to surrender his. This is a body which knows its own mind and cannot be blown about by every wind of doctrine. I therefore say to those who differ from me, live on in your faith, but I will die in mine.

The whole subject, indeed, is too simple for argument. The fact cannot be questioned that our Legislature is and has been utterly corrupt. For years the three Houses (counting the lobby as a House) have been weltering together in one disgusting mass of moral putrefaction. No man dares to deny this. The evidence of it is conclusive, irresistible and overwhelming. It is admitted by every man on this floor except three or four who have made feeble and futile attempts to deny it. One of the most distinguished gentlemen in this body—he who won his fame as chief magistrate of the Commonwealth, and added to its lustre by his high career as a diplomat—while he deprecates this measure of prevention, not

only admits our legislation to be corrupt, but adds his testimony that the great office of United States Senator is bought and sold, as well as corporate franchises and appropriation bills. Shame! shame forever to the man who is willing to perpetuate this infamy! The honest and respectable portion of our people will not endure it with patience. If we can help it we will not have the hoofs of these beasts on our necks any longer.

"Large-handed robbers your grave masters are,
And pill by law!"

If you would not have this degrading slavery fastened forever on your children, rise now; throw off your shackles; hew them link from link. But you won't do it; it is not in you.

I not only decline to argue the facts, but I mean to be silent upon the principle and policy of this amendment. If any man thinks it good to live under a government which habitually betrays and plunders him, let him enjoy in peace the huge satisfaction which Harrisburg will afford him. Besides, I cannot argue with a man who believes legislative corruption is a thing to be defended or tolerated in a civilized and christian community. If a gentleman wishes to debate the morality of murder or rape or robbery or horse-stealing or arson, I will endeavor to prove that all these are very hurtful crimes, and as gently as possible I will try to vindicate the laws which forbid them. But bribery and corruption in the making of our laws is not open to discussion; I will not hear and I will not answer any defence of it which can be made—no, not if an angel from heaven would make it.

But there is another question upon which we divide. Shall we swear the members of the Legislature to execute their trust? Will we make the oath iron clad? Will we compel them to take it when they go in and when they come out and make it so plain that if they commit any act of unfaithfulness they will see that it exposes them to all the penalties of perjury in this world and the next? Will we so shape it that it must speak to their consciences of penitentiary and disfranchisement as well as damnation to their eternal souls? The Convention will probably answer this in the negative. Among our leading men here there is a manifest opposition to any specific oath for legislators which might impede their intercourse with the base miscreants of the lobby. It is not oaths in general that are objected to.

We all admit that judges, jurors and witnesses ought to be sworn. We do not let an arbitrator or a road-viewer undertake his duty without putting him under oath. The smallest private trust is guarded by oaths of great solemnity. An executor, administrator or guardian must promise on oath beforehand that he will be faithful, and afterwards he must swear again to every transaction, item by item, that he has honestly executed his trust. All this is admitted to be necessary and proper. But when it comes to swearing a member of the Legislature that he has not betrayed, or will not betray, the high and sacred trust reposed in him, then this Convention raises its hands and turns up the whites of its eyes in holy horror. Whenever an oath is proposed that abridges the corrupting influence of the lobby, then the piety of some gentlemen gets awfully shocked, and they have tender religious scruples against the multiplication of oaths. It is impossible even to pacify them by assuring them that, in their case, we will only ask them to affirm.

It is especially necessary that this oath against receiving gifts shall be taken in view of the condition in which your Constitution is put by the thirtieth section of the article on legislation. There is a definition of bribery there, which makes any gift of money to a member of the Legislature perfectly innocent and legal unless you can connect it with words or acts which express or imply a contract between the giver and the receiver that the money is paid for the vote and the vote given for the money. You must affirmatively prove a corrupt bargain. The mere receipt of money from an interested party is not bribery. This is an entirely new rule and gives unlimited license to the most open and shameless corruption.

Sir Robert Walpole said that every man had his price, and he bought the House of Commons by putting a Bank of England bill for the proper amount into each member's vest pocket without saying a word. Under your new Constitution that would not be bribery.

The gifts bestowed on Lord Bacon were, not one of them, accompanied by a contract that he should decree in favor of the donor. They professed to be merely presents; and he declared to the end of his life that he never was in fact influenced by them. Yet he was found guilty on his own confession. "I do acknowledge," said he, "that I am guilty of corruption."

The great Yazoo fraud in 1796 was managed without a bargain. A body of adventurers applied to the Legislature of Georgia for a grant of the public domain; and got it by simply distributing among the members deeds for a portion of the land. The next Legislature repealed the law—took it out of the statute book—burnt it ignominiously in the public square—ordered the courts to expunge from the records of every county all papers that recited it. "To the intent," says the repealing law, "that no remembrance of this infamous transaction may remain on the earth, except this, its solemn condemnation." But that was no crime if your definition of bribery be a good one.

Neither was the LaCrosse railroad company guilty of bribing the Wisconsin Legislature. The bonds of the company were laid upon the desks of the members, thrust into the hands of the Governor, and put upon the tables of the judges, but no promise, agreement or contract was made; no understanding, express or implied, was had that any vote should be given or withheld.

If it be true that money in large amounts was openly distributed at Harrisburg to the members at the taverns, on the streets and in the halls of the two Houses, at the time when the tonnage tax was repealed, it did not come within your definition of bribery. Caldwell, M'Donald, Patterson, (all disciples of the Harrisburg school,) never gave a bribe, or took one, before or after their election to the United States Senate. Ames and Alley and the whole Credit Mobilier set are guiltless because they made no bargains for the votes they bought with the stock which "they placed where it would do most good."

Why, Mr. President, if the new Constitution passes in its present shape anybody that pleases may set out a table, piled with greenbacks, in the rotunda of the State Capitol, and with perfect impunity hand them out to the members of both Houses as they pass through, provided he does not do or say anything which can be construed as a bargain for votes. I have no right to say that the section I allude to was designed by its framer to have this scandalous effect. It looks like a mere ignorant bungle. If it stands it will disgrace the intelligence, if not the integrity, of this Convention forever.

Let me be understood. I assert that the mere naked receipt of money, property or other valuable thing by any officer, judicial, executive or legislative, from a person who has an interest in his official action is *ipso facto* bribery, though it be not given for a vote or a judgment, but wholly without any understanding of that kind, or of any kind. Nay, if the officer declares that he will act against the interests of the donor, or even if he does actually vote or decide against him, it is still bribery, upon the principle settled three thousand years ago, that "a gift blindeth the eye and perverteth the judgment of the righteous."

I have referred to this part of the article on legislation, to show that unless you swear your legislators against taking gifts you have no protection at all against bribery. You must have something to counteract the corruption which that article invites, unless you desire to throw the reins loose on the neck of these scoundrels and let them carry you whithersoever they please.

If it be your will, and the will of the people you represent, to have no check upon the rampant corruption that reigns and riots at Harrisburg, you have given yourselves much unnecessary trouble about election laws and the apportionment of the districts. What matters it how the Legislature is chosen if the lobby is to govern us anyhow? They may as well be the spawn of a fraudulent ballot-box as not.

But I am not speaking with the remotest prospect that this measure can be carried. We are out on a forlorn hope. From the time it was first proposed until now, the foremost men of this body have given it every possible mark of their dislike. It would be received, I am sure, with almost rapturous approval by the honest people of the State, but it is not intended here that the people shall have a chance to express their opinion on it. The utmost I expect is a square vote against me. But the record will attest that I have done my duty faithfully, though feebly. The proposition will be voted down; corruption will be throned and sceptered and crowned; the lease of power will be indefinitely extended to the men who now rule us for their pleasure and plunder us for their profit. Let all the rings rejoice.

Mr. BROOMALL. I should like to ask the gentleman before he relinquishes the floor whether it would not be well to

modify that oath so as to make the members swear that they have staid at their posts during the time for which they were elected and attended to their duties steadily? [Laughter.]

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. COCHRAN. There is one clause in that oath which says something about "listening to solicitation," which I should like to hear read.

The PRESIDENT *pro tem*. The clause will be read.

SEVERAL DELEGATES. Read the whole oath.

The CLERK read as follows:

"I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability; I have not knowingly listened to private solicitation from interested parties or their agents, nor have I received any gift from any such parties; I have not voted or spoken on any matter in which I had or expected to have a private interest; I have not done, nor willingly permitted to be done, any act which would make me guilty of bribery; I have observed the order and forms of legislation as prescribed by the Constitution, and I have not knowingly voted or spoken for any law, bill or resolution which I knew or believed to be inconsistent therewith."

Mr. COCHRAN. I move to strike out the clause "I have not knowingly listened to private solicitation from interested parties or their agents."

If I understand that clause, it goes very far. Is a member of the Legislature to shut his ears to solicitations even from interested parties? Is he not to allow them to speak to him at all on a subject in which they are interested? If the language was "yielded to their solicitations," that would be another thing; but I cannot understand the harm of listening to solicitations from anybody; I do not see the wrong of that; and I presume it is the right of the people to go to the Legislature and solicit the support of members even for matters in which they have a private interest, provided they do not go with offers of corruption. "I have not knowingly listened to any private solicitation of parties having an interest in the matter in hand"—that I believe is the substance of the clause. Now, I do not see the harm of listening to that. I do not see why a man should be compelled to re-

fuse to do it even from an interested party. I think if that clause was removed from the oath, it would be far less objectionable and really do the substance of it no harm.

Mr. KNIGHT. Mr. President: We can obviate that difficulty by sending only deaf men there. [Laughter.]

Mr. J. S. BLACK. Such men seem to be here in this Convention.

Mr. KNIGHT. They come here occasionally.

Mr. GIBSON. Mr. President: I would say to my colleague (Mr. Cochran) that I think this clause is one of the most important in this oath. The object of it, as I understand, is to keep members of the Legislature, like yours, free from solicitation. If a man wishes to have a bill passed, instead of going and boring individual members for its passage, let him go regularly before the proper committee and be heard, and his reasons be heard. The object of this clause is to protect members, like jurors, like judges, from being acted upon by private solicitations to cast their votes in a particular way. Let them be free. It is for their protection as well as for the protection of the community, and I think we ought to retain the clause.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Cochran) to the amendment.

The amendment to the amendment was rejected, there being on a division: Ayes twenty-five; less than a majority of a quorum.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Huntingdon (Mr. J. M. Bailey.)

Mr. HUNSICKER and Mr. WORRELL called for the yeas and nays.

Mr. BUCKALEW. Before the vote is taken I desire to suggest an amendment of a single word. This oath is confined to members of the Legislature. I am willing to vote for it if the gentleman from York will insert the word "corrupt" before "solicitation." I am not prepared to say that no man honestly interested in matters of legislation shall talk to members by way of protest against something that is wrong, or by way of explaining what is right. I say I am willing to vote for this amendment with the insertion of the word "corrupt" before "solicitation."

A great many gentlemen seem perfectly willing to go into this new field. It is

something unknown in legislative history. We should not forbid discourse with a member of the Legislature unless it is a discourse of a corrupt tendency. Without that word being inserted I do not see how I or any others can vote for this amendment.

The PRESIDENT *pro tem*. Does the delegate from Columbia move to amend?

Mr. BUCKALEW. In order to raise the question, I move to insert the word "corrupt" before "private solicitation."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia to the amendment.

Mr. J. S. BLACK. Mr. President: One word of explanation. We know that private solicitation of persons who are charged with a public duty is, of itself, corrupting. It may influence unfairly the party to whom it is addressed, and he ought not to hear it. Judges and juries are protected by law against this kind of influence. If you would surround the courts with secret borers, the public would have no confidence in them. But a party is punished for contempt if he whispers his claim or his defence into the private ear of the judge; and a verdict is set aside if the jury has been so tampered with.

It may happen sometimes that a man should have private conversations with a judge about his cause. There are cases in which it might be very convenient and do no harm. But the privilege must be universal or else be denied altogether. If everybody had it, you can easily understand how grossly it would be abused. The whole business of the court, instead of being done in the face of the public, with the parties confronting one another, would be settled in private conferences with professional borers. The courts would soon be as corrupt as the Legislature.

Why should not members of the Legislature be as honest as judges? To make them so is a consummation most devoutly to be wished. Why expose one set of public servants to temptations from which you shield the others. The convenience of it as a means of getting good laws passed, is the only defence of the system which I have heard. But, it is also the fruitful source of a thousand frauds. Honest men who may happen to have business with the Legislature may well afford to give up a little convenience for the sake of protecting themselves

from the abuses of this privilege in the hands of unscrupulous persons.

I go for a total extirpation of the whole system of private boring. Let us lay the axe to the root of that rotten tree.

At the same time, I would allow the freest intercourse between the people and their representatives through every public channel of communication. Let every man be fairly heard by petition, remonstrance or open speech before a committee or, if need be, at the bar of the House. But let us emancipate ourselves from the damnation of the third House, which works in secret, and seeks darkness rather than light, because its deeds are evil.

Mr. COCHRAN. When I made the motion to strike out that clause, I made it in perfect good faith, for it was in that event my purpose to vote for the oath as provided in the amendment; but, sir, I cannot consent to vote for this oath with such a clause in it. I have always understood that there was a very great distinction between the nature of the business entrusted to a member of the Legislature and to a juror, and I do not understand now that the proposition here proposes to engraft the juror's oath into this oath, in terms. If you are to put the two on an equality, why not put the language of the jurors' oath, which is well known, into this particular section of the Constitution? Sir, I believe that the constituent has a right to go to his Representative, and not only to go to him in public, but to speak to him in private, and that he has a right to place his case before him and even to ask his vote for it in a proper manner.

Mr. J. S. BLACK. Because he is a judge?

Mr. COCHRAN. No, sir, not because he is a judge. A member of the Legislature is not a judge and exercises no judicial functions.

Mr. J. S. BLACK. Because he is his constituent?

Mr. COCHRAN. Because he is his constituent and the member of the Legislature is his representative, I think he has a right to go to him; and when a man is a member of the Legislature he is in some sort a representative of every citizen of the State. With great respect to both of my colleagues, I must draw that distinction between the two classes of persons, and I think it is a fair distinction, and one which has always been recognized. The character of the duties imposed upon a juror and a Representative is very distinct and very different. Why,

sir, we make by our Constitution the halls of legislation open to the public; we make the jury room sealed to all intrusion from outside. It is the duty of the Legislature to transact its business with the public eye fixed upon it and in the face of the community. It is the duty of the juror to seclude himself in his room, and he and his fellows are to determine the cause when it has been submitted to them under the charge of the court. I think these are plain distinctions, and that this attempt to shut up the representative from his constituent, to seclude him, to put him in the position of a juror, apart from all others but those who are with him entrusted to decide the particular cause submitted to him, is wrong in principle; and I cannot vote for any measure which proposes to carry it out.

Mr. J. S. BLACK. With the permission of the gentleman, I wish to ask him one question. Will he say whether he intends to vote for this measure provided his amendment is made?

Mr. COCHRAN. I did make that declaration distinctly. I made it in good faith.

Mr. PURMAN. Mr. President: The delegate from York (Mr. J. S. Black) has favored us this morning with a very elegant speech on the subject of crimes, and their injurious effect upon the Commonwealth when committed by the Legislature—

Mr. J. S. BLACK. I do not want to take the thunder of the gentleman from Greene, but he will allow me simply to say that at the request of divers gentlemen around me, though it is not exactly according to my own convictions of what ought to be done, I will accept the amendment offered by the gentleman from Columbia (Mr. Buckalew.)

Mr. BUCKALEW. I suppose the word "private" would be superfluous.

Mr. J. S. BLACK. Oh no, not at all. "Corrupt private solicitation" is right.

Mr. BUCKALEW. Very well.

Mr. PURMAN. Mr. President: With regard to the views entertained by the distinguished delegate from York as to the fatal consequences of such practices as he refers to of the third House at Harrisburg, I suppose the entire membership of this Convention are in accord with him. The proceedings of this Convention furnish clear and convincing proof that every delegate here desires to purify the Legislature, to improve it all in their power; and the practical question then is, how shall that be done? It is to the practical

aspect of the oath proposed by the gentleman from York that I propose to call the attention of the Convention for a moment.

The legislative body is not exactly like the court, to which the gentleman has likened it. In the courts, either the parties or their counsel present all the facts and the law of the case to the judge and the jury, and then they dispose of the cause upon the facts and the arguments as presented by either the parties or their advocates. In such a mode of procedure the parties are fully heard, and the merits and justice of the cause may be passed upon. How is it in the legislative body? Who carries there the grounds upon which a bill is proposed to be passed or the merits of a certain act of the Legislature? There are no counsel employed for that purpose. The legislative body is not a body for the purpose of receiving arguments made in open session by the parties interested in general or special laws. On the other hand, it is forbidden. I know of but very few instances in which persons were permitted to appear in the open Assembly either to present their petitions or the considerations upon which they based their right to have any particular law or any particular relief. How, then, do they present the grounds on which they base any particular act of the Legislature, or any grievance redressed? Through their member. This is one of the purposes for which a representative is elected. How do they (the people) communicate the facts to the member? Either by meeting him at his room, or at his home, or by written communication, or upon the streets, and handing or mailing him a bill, telling him, "here is a bill that I desire to have read in place and passed; the object of it is thus and so." Of course there is no harm in that. That is what the people send their representatives to the General Assembly for. When it comes to the point of corrupt solicitation, as the oath is now proposed to be amended by the gentleman from Columbia, (and it may not be out of place for me to state here that I have been calling the attention of my distinguished friend from York, during the whole sessions of this body, to the importance of having the word "corrupt" before the word "solicitation,") then I think the whole Convention will go with him; I certainly shall. Without the amendment the oath would be mis-

chievous. The Convention will see at once that there is no way of presenting these questions before the Legislature except by a member or before a committee. Those interested in a bill may appear before the committee to which it is referred and be heard; but it may happen, and doubtless often would, that there would be no member on that committee from that portion of the State in which the friends of the bill reside, and therefore they would have no person who had sufficient knowledge of the facts or regard for the measure to represent them on the floor of the body. Then they may come into the legislative body again by petition; but if all the considerations upon which a bill is to be passed are to be presented by petition, the legislative sessions would be protracted far beyond their present extent.

I suggest to my distinguished friend from York to strike out the word "private" before "solicitation." If you allow it to stand "corrupt private solicitation," it would seem to imply that you could corrupt the Legislature publicly as much as you pleased; but omitting the word "private," all corrupt solicitation, private as well as public, will be excluded.

Mr. D. W. PATTERSON. Mr. President: I shall not occupy more than four or five minutes of the time of the Convention. I am opposed to this amendment offered by the gentleman from York, (Judge Black,) and even to that which we have already passed upon, and I really am not able to account for his proposition or the language of the gentleman in presenting it, except upon the ground that he does not believe in a republican form of government. If I believed that we were about changing the form of our government from a representative democracy to an aristocracy, or monarchy, or something of that kind, I could imagine that the remarks which we have just heard presented by the distinguished delegate from York were in place and ought to be listened to silently. If I believed that members of the Legislature were elected by the people to go there and carry out their own individual wishes and individual sentiments independent of the people and without regard to their views, their wants, or their desires, then I could sit silently by and not denounce as monstrous the proposition that a member of the Legislature shall swear that he shall "not knowingly listen to any solicitation." If I believed that the people of all parties were utterly demoralized and cor-

rupt beyond reformation or redemption, as the distinguished member from York does, I probably would sit silent and listen to such remarks; but, sir, I think it is a slander either to make that allegation or to make assertions which will lead to such conclusions. I believe that the great *masses* of all parties in this Commonwealth and in all the Commonwealths of this Union are honest and above and beyond corruption. If I believed that this government was doomed and beyond redemption and going down to perish in our day, as the gentleman from York does and has asserted, I might take a view of this subject similar to that which he takes. I entertain no such sentiments; but, sir, I believe that members of the Legislature are elected to go there and listen to the wishes of the people, to communicate with them, to ascertain their wants and to meet their wants by wise and judicious legislation. They, the members of the legislative branch of the government, are a part of the people, and go there to carry out their wishes and their will. I believe it to be their duty to do that and to communicate with them personally and otherwise to learn their wants, and if we impose upon them an obligation that will prevent them from doing that, we are striking at the very root of republican government—of representative democracy.

I cannot account for such a proposition as this and for the language of the gentleman from York in any other way than by believing that the gentleman is sincere when he alleges that this government is past redemption. I do not believe so. I believe the masses of all parties are honest; the people are honest; and they will soon reform their representation in the legislative branches of the State government. Nor do I believe that the Legislatures that have met for the last ten, or twelve, or twenty years were corrupt. I think that very few corrupt men have been in those Legislatures. A few, and only a few, of any party have been in any way demoralized or corrupted. I do not believe as the gentleman from York, that this government is doomed. I repudiate such anti-republican sentiments. I do not believe we are going to establish an aristocracy. I believe that the representative in the Legislature *must* listen to his constituents and must obey their will. This government is founded on the will of the people, and it would be monstrous to intimate

here, much less to enact an oath that will prevent the utmost intimacy between the representative and his constituency. Taking an oath will not make a dishonest man honest, and the oath proposed assumes that every man elected to the Legislature, or any other office, is a rascal. This is an unjust reflection on the intelligence and integrity of the people themselves. Sir, I cannot sit silent and listen to imputations and arguments of this kind, based upon the presumption that the people are corrupt and not worthy to be heard by their representatives in the Legislature. It is monstrous, and I denounce it as a libel upon the intelligence and patriotism and honesty of all parties of the people of this Commonwealth.

MR. CORBETT. I desire simply to say a word or two in explanation of the vote that I shall give. Certainly I am in favor of purging the Legislature and all other bodies, whether executive, judicial or otherwise; but I cannot vote for the proposition. I voted for a tolerably stringent oath, although I have little confidence in oaths. I have little confidence that any oath we may adopt will make men honest. Honest men do not need oaths; they are necessary only for persons who are dishonest. But, sir, I never will give my assent to a proposition that after a man has committed a crime, he shall purge himself on oath. I may vote, where it is necessary to the ends of public justice, that a party may be required to disclose something that may tend to criminate him, provided it is for the public advantage, but then I shall protect him against what he discloses. But here is a proposition asking a legislator, after his term of office has expired, to purge himself on oath; and for what purpose under heaven, I know not, unless it be to add upon his soul perjury to the crime he has already committed. Now, why do this with respect to a body of men elected by the people in the different sections of the Commonwealth to represent them in the Legislature of the State; men who go there with the endorsement of the people? What good purpose will be subserved by it? The man who will disobey the first promissory oath that he took, will not regard the second that he is to take. You do not need any restraining power on honest men, and dishonest men will disregard it. Why, I repeat, ask the dishonest man, after he has been guilty of crime, to add to that crime the crime of perjury? Why ask him to commit a crime for the mere

purpose of punishing it? I cannot give my assent to such a proposition.

It appears to me, Mr. President, that we sit here daily for the mere purpose of passing judgment upon the Legislature and the legislators of our State and pronouncing them corrupt. That corrupt men go there, I have no doubt; but they are few. They may in some instances hold the balance of power; but you are not going to reach those few men who go there and who are actually dishonest, by this oath. I doubt very much if you do not deter all honest men from going to the Legislature. I doubt very much whether any honest man will go to the Legislature if you place such clauses as this in your organic law. You place before him in your organic law a provision that tells him he is a suspected person; that he must first take an oath when he goes into office, and afterwards, being under suspicion, must purge himself by another oath. I shall vote for nothing of the kind.

Besides, the section as it now stands is ridiculous on the face of it. It provides that corrupt private solicitation is not to be used. Inferentially, therefore, you may corrupt the Legislature by any public means whatever. But, sir, the whole section is wrong. I shall neither vote for the amendment, nor for the section as offered; and I should not have opened my mouth on the subject were it not that I desired to place the reasons for my vote on the record.

MR. H. W. PALMER. MR. President: The gentleman from Greene (Mr. Furman) seems to apprehend that to adopt this oath would in some way change the form of our representative government. I cannot share his apprehensions. The members of the Legislature represent the people, and they are to act for the people in their representative capacity. This is only a question as to how they shall obtain the information upon which they shall act. Now they receive their information through private sources and from private individuals, and are moved by private solicitation to do this or that in their legislative capacity, all of which is inconsistent with the disinterested exercise of judgment and purity of official action. One purpose of the oath is to require that this information shall come to the members of the Legislature through public sources and that their official acts shall be based upon information received in a public manner.

The only objection which has been or can be urged to this section is that the practical workings might in some cases be inconvenient. In place of taking a member of the Legislature aside and speaking to him privately and representing your views with respect to this or that law, it would become necessary to reduce them to writing and transmit them to the Legislature in that form, and have them laid before that body and referred to the appropriate committee. That, I agree, would be inconvenient but not impossible. On the contrary, it would be quite possible. Now, if we can shut off in any measure this awful tide of corruption that rolls through the legislative halls year after year, had we not better submit to a little inconvenience? That seems to me to be all there is in this case. That we have oaths and that we shall have oaths, is very certain. Ever since the days when Abraham required his servant to put his hand under his thigh and swear by the God of heaven and earth to go to another land and take a wife for his son, down to this day, men have reposed singular confidence in declarations made under the solemnity of an oath. The Jews swore by the God of Israel, by Him who is gracious and merciful. The Grecian man swore by the Olympian god, and the Grecian women by the chaste bed of his royal spouse; the Indian by a stream that flowed from a sacred fountain; the Scandinavian by a bloody ring held by a priest; the Germans by their swords and beards. Later every nation swore by its tutelary divinity. The Theban by Mercury; the Cornithians by Hercules; the Athenians by Jupiter and Neptune. All down through the ages in great public emergencies specific and particular oaths have been required. The oaths of homage and fealty are familiar to us all. The oath of supremacy was prescribed after the terrible wars of the Roses. It is known to every student of English history. The oath of allegiance after the British union and the accession of James Ist of Scotland, the oath of abjuration and the various other specific oaths that are mentioned in history have been prescribed at times of great public necessity and danger. Such an epoch is that upon which we have fallen, and hence the necessity for remedy like this.

It is merely a question of judgment. That we shall have an oath is certain. What kind of oath we shall have is the only question in dispute.

Some of us seem to believe that there is no efficacy in an oath at all, and that bad men will take any sort of an oath with impunity. Others think there is great efficacy in oaths; no sure standard can be found whereby the views of one or the other can be tested, and as this is a mere question of judgment, and at the same time an effort in the direction of reform, as it can not do hurt and may do good, I appeal to those gentlemen who do not believe in a specific oath to yield their judgment and go for it. Let us do what we can while we have time. If there was no other reason than that the delegate from York, (Mr. J. S. Black,) whose great ability, long term of valuable public service and unspotted integrity entitles his views to unusual consideration, believes in it, that it receives the sanction of his judgment, it would be reason enough for me; but there are many other reasons, and as it is an honest step in the right direction, do not let us hesitate to take it.

Mr. LILLY. I do not know anything about this subject; but I desire to show the Convention that I am one man in this body. I do not wish to say anything that is ridiculous, or anything that will lead the House to do what is ridiculous; but I wish to say that I have listened to the gentleman from Luzerne about the different forms of oath, and no doubt they were given by him very correctly, as they certainly were in very eloquent language, in which I was very much interested. Now, however, I would ask him and the other members of this body to come down to a straight-forward American oath, and that is, that we swear men to do their duty with fidelity, nothing more, nothing less. We want no iron-clad double-ender oaths that will not amount to anything, but that will, in the language of the delegate from York, be a hissing and a scorn in the eyes of the people.

Mr. CURRY. Mr. President: I am in favor of this section, and will vote for it, because I believe it to be right. "Abraham said unto his eldest servant, 'put, I pray thee, thy hand under my thigh, and I will make thee swear by the Lord, the God of Heaven, and the God of the earth.'" Sir, as far back as the days of Abraham an oath was administered and recognized. Down along the line of ages, through every period of the history of our world, the solemn sanction of an oath has been respected and kept by men of honor and integrity. This oath will be

easy to take by men who propose to do right while members of the Legislature, and will serve to stimulate them while in the performance of their official duty.

If, however, on the other hand, it is found out that the party taking the oath does it for the purpose of deceiving and thereby perjuring himself, his own conscience should be enough to condemn him, but if there is no conscience left, I claim that the fear of detection, the fear of public opinion, the fear of public investigation, the fear of disgrace, dishonor, degradation and ruin staring him in the face will be of great effect. If a man has no respect for truth, no respect for justice, no respect for his fellow-men, it seems to me the fear of being dishonored forever will stimulate him to tell the truth, or forbid him to take the oath at all.

Mr. KATINE. Mr. President: It has been and is objected to this subsequent oath that it is unusual and extraordinary, that it is an anomaly to require a man after he has occupied an office and performed its duties, whether faithfully or unfaithfully, and ceased to be an officer, ceased to be a member of the General Assembly, to take an oath that he has discharged his duties faithfully. Mr. President, it is not new. The greatest judge of Israel did this thing; he went before the people and declared to them, "Behold here I am; witness against me before the Lord and before his anointed. Whose ox have I taken; whose ass have I taken; or whom have I defrauded? whom have I oppressed? or of whose hand have I received any bribe to blind my eyes where-with? and I will restore it to you." So, sir, I say we should require our officers to swear that they have taken no man's ox or his ass, or defrauded or oppressed any one, or received a bribe from any man.

The gentleman from Carbon thinks that an oath of this kind is not only unusual, but that to require it would be degrading, that nothing more is necessary than to require men to take the old-fashioned oath to support the Constitution of the Commonwealth and discharge their duties with fidelity. Why, Mr. President, each of the judges of the Supreme Court of the United States, before they enter upon the discharge of their high functions, takes an oath which I will read, and I desire the members of this Convention to listen to it and see whether they are degraded by taking an oath prescribing how they shall discharge their important duties:

"I do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the *poor* and to the *rich*, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge according to the best of my ability and understanding, agreeably to the Constitution and laws of the United States, so help me God."

A judge of the Supreme Court of the United States, before he takes his seat on that bench, takes an oath that he will do equal justice to the poor and to the rich. That may seem a strange kind of an oath in these days; but nevertheless it is so. No reason in the world can be given why a member of the Legislature should not after his term of office has expired take the oath required by the proposition now before us. If he is an honest man, he can do it without any compunction of conscience; and if he is a dishonest man, if he has acted corruptly, he will not take it. The man who has been corrupt in the Legislature will not go before the judicial officer and subscribe to this oath required of him; he will refrain from it, and thus the people will get rid of officials of that kind.

Mr. MANN. Mr. President: Frequent reference has been made during the discussion of this subject, both to-day and at other times when this question has been before the Convention, to the Bible and to what was said of old on this subject of swearing. I propose to make a reference to an authority which I suppose will be accepted by every one on this subject, and I think it very pertinent and a complete answer to very much that has been said this morning:

"Again, ye have heard that it hath been said by them of old time, thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths:

"But I say to you, Swear not at all: neither by heaven, for it is God's throne:

"Nor by the earth, for it is his footstool: neither by Jerusalem, for it is the city of the great King.

"Neither shalt thou swear by thy head, because thou canst not make one hair white or black.

"But let your communication be yea, yea; nay, nay: for whatsoever is more than these cometh of evil."

That I accept as the very highest authority upon this subject, and I affirm here, as I have before, that I thoroughly believe that no oaths ever yet taken made a dishonest man an honest one.

Mr. CURRY. May I ask the gentleman one question?

Mr. MANN. I have but a few minutes and I prefer to occupy them myself. I deny that it is a popular belief in this country that when a man takes an oath that he will tell the truth or perform a certain thing, that oath carries into the mind of the American people the assurance that it will be done. I assert that that assurance depends upon the fact whether it is an honest man or a dishonest man who makes the statement. That is my conviction on the subject, and all this repetition of oaths, as is said by the Great Authority on this question, is of evil and nothing else, and it will merely result in evil.

The way to punish corruption in the Legislature, as everywhere else, is to make penal laws that will deter dishonesty and corruption, and enforce them; but the attempt to purge the Legislature of corruption and rascality by oaths will be always a complete failure, and the insertion of this proposed oath into the Constitution of Pennsylvania will bring this Convention into contempt on the part of the people. That is my conviction. Why, during the war, we had iron-clad oaths which we administered to all classes of people that the authorities did not seem to think were quite reliable. I heard a little anecdote during that time which illustrates the popular belief upon the value of oaths. It was this: A man and his sons working in the fields caught a large rattle snake. They thought at first it was a very fine thing, but pretty soon it began to be a little troublesome. They did not know what to do with it. At last the father said to the boy "what shall we do with this snake?" One standing by said "why, swear him and let him go." [Laughter.]

That is the belief of the value of oaths among intelligent men everywhere, and I say it would be just as sensible to swear a rattle snake as it would be to swear a corrupt legislator either before or after he has been in that body, and it would have just as much virtue in it. If one-half that has been urged against the Legislature of Pennsylvania is true, the proper remedy is to abolish it entirely, and it would be more manly, in my judgment, to bring in a section abolishing the Legislature and providing that this body from this time on will do all the legislation of the State. Our organization is complete; we have made arrangements by which we can fill all vacancies for all time to come and we

could do all the legislation, and I have no doubt we could do it honestly, and then there would be no further corruption, no further difficulty in the matter. It does seem to me that if half what has been said is true, that is the course which gentlemen ought to advise.

Mr. BROOMALL. I offer an amendment to the amendment, being a substitute for the section :

The CLERK read the amendment as follows :

"That, in lieu of all official oaths, every male citizen shall be sworn or affirmed at the time of his birth that he will never steal, kill, commit arson,"—

Mr. HOWARD. I object. That is ridiculous.

SEVERAL DELEGATES. Let us hear it.

OTHER DELEGATES. No. No.

Mr. HOWARD. It is not germane to the question.

Mr. H. W. PALMER. Read it and put the man on the record that offers it.

The PRESIDENT *pro tem*. I cannot tell whether it is germane or not. It must be read.

Mr. CORSON. I object to it.

Mr. TEMPLE. I object to its reading.

The PRESIDENT *pro tem*. The reading cannot be stopped. The reading will be completed.

Mr. McCLEAN. I suggest that the Chair examine the amendment.

Mr. CHURCH. I suggest not. It ought to be read, Mr. President.

Mr. NILES. There is nothing obscene in it so far.

Mr. CHURCH. It ought to be read.

The PRESIDENT *pro tem*. The Chair certainly cannot prevent its being read. The amendment proposed will be read.

The CLERK read as follows :

"That, in lieu of all official oaths, every male citizen shall be sworn or affirmed at the time of his birth, that he will never steal, kill, commit arson, or rape, or do any other unlawful act"—

Mr. HOWARD. Is it in order to read such ridiculous stuff to a body of sensible men? I object to it.

SEVERAL DELEGATES. Let it be read.

Mr. HOWARD. No, sir, not unless I am forced to permit it to be read. I say it is out of order and it is ridiculous and absurd.

Mr. HAY and others. I call the gentleman to order.

Mr. HOWARD. It should not be permitted here.

The PRESIDENT *pro tem*. The sense of the Convention is against it, but the Chair

thinks it ought to be read, but he will take the sense of the Convention. ["No." "No."]

Mr. CHURCH. The gentleman who offers the amendment has the right to have it read.

Mr. HOWARD. I call for the yeas and nays on the question.

Mr. CHURCH. That is an unheard of proceeding.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK continued the reading of the amendment as follows :

"And that the executors or administrators of every such male citizen, upon his death, shall take and subscribe an oath or affirmation that the decedent never did steal, kill, commit arson or rape, or do any other unlawful act; and in case of the violation of either of the said oaths, the estate of the decedent shall be confiscated for the benefit of the State." [Laughter.]

The PRESIDENT *pro tem*. The Chair is compelled to rule it out of order as not an amendment to the amendment.

Mr. TEMPLE. I move that that paper or the substance of it be expunged from the records of the Convention.

The PRESIDENT *pro tem*. The question now is on the amendment of the delegate from Huntingdon (Mr. J. M. Bailey.)

Mr. HOWARD. I call for the yeas and nays on the substitute offered by the delegate from Delaware (Mr. Broomall.)

The PRESIDENT *pro tem*. That has been ruled out of order.

Mr. HOWARD. But it was read.

Mr. BROOMALL. I submit to the ruling of the Chair.

The PRESIDENT *pro tem*. The proposition has been ruled out and is not before the body.

Mr. BEEBE. Mr. President: I do not wish to take up the time of this Convention, nor do I expect to enlighten it by anything I shall say; but as an humble individual, having a duty to discharge, I wish briefly to give my views upon the question now pending. Many members of this Convention have heard me state that I agreed with the delegate from Potter, (Mr. Mann,) that I was opposed to oaths, and that I felt that the introduction of oaths to the extent that is now in use in our courts, and generally, amounts in my opinion to little less than blasphemy. But, sir, an oath we must have. The sense of the Commonwealth, and the

sense of this Convention is in favor of an oath, and while I am not permitted to allude to anything that transpired in committee, I believe I will simply state that if I could have prevented at the time the introduction of a report of this kind, I would have done so, and that is not saying what transpired in committee.

I believe, as a principle, that an honest man will tell the truth, whether he is sworn or not, and that a dishonest man will tell an untruth if he be sworn as readily as he would if he were not sworn, provided there is not a *legal penalty attached*, and the fear of the penalty only amounts to any prohibition. That is my belief, and I believe that it is the experience of the mass of men familiar with public life in this Convention. But inasmuch as we are to have an oath, inasmuch as we are to have a law, inasmuch as we are to have a test upon this question, I believe if there be any virtue in it that virtue will be found by making an extreme case, covering the whole ground, and with penalties provided, and with this view, and for the purpose of testing what so able and so learned a gentleman as the gentleman from York believes to be the correct rule, and so many others of this Convention, I shall vote as I have heretofore voted. I voted for the former oath, and I shall vote for this oath. I wish to have it extreme in order that we may test what the utility of it is.

One further consideration and I have done. I want to vote for this, furthermore, because it is an innovation, because no other State of the Union has ever asked for it or declared it. I want to see the grand old Commonwealth of Pennsylvania willing to come up to the work and subscribe to something that is an invention of her own, that is ahead of the times, that is progress, that is not imported from Illinois, Iowa, Minnesota, or Texas. I trust that this will prevail for that reason in connection with the other; first, that we may have a full test of the power of oaths; and second that we may show to the world that the Commonwealth of Pennsylvania is willing to do something that some other State has not done, and besides if right it will then have the fullest opportunity for vindication, and if wrong, will the sooner be struck from the organic law.

Mr. J. S. BLACK. A verbal amendment is required to be made in this proposition which was not made, but which was supposed to have been made at the time the

amendment was offered. Besides the introduction of the words suggested by the gentleman from Columbia, it is necessary in the thirty-fifth line to add immediately after the word "parties" the words "or from any candidate;" also in the same line the words "or promise" should be inserted after the word "gift."

I move to amend the amendment in these two particulars.

Mr. J. M. BAILEY. I accept both amendments.

Mr. TEMPLE. How will that make the clause read?

The CLERK read as follows:

I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth, to the best of my knowledge and ability; I have not knowingly listened to corrupt private solicitation from interested parties or their agents, nor have I received any gift or promise from such parties or from any candidate."

Mr. C. A. BLACK. I know that the Convention is tired of this debate, and I shall not occupy much of its time. The question is a very grave one, and should be treated with all proper decorum. I think the levity displayed upon this subject here is exceedingly unbecoming in a body like this. I have no doubt in the world, however, I may differ with my excellent namesake who was elected on the State ticket at large, that he is honest and entirely sincere in his convictions that this oath, if adopted, will go far to give greater purity in our legislation and correct the evils of which he complains.

I desire to state very briefly to the Convention the reasons why I must dissent from the conclusion arrived at by him. Let us see for a moment where we are in this matter of oaths. First, we have an oath in the legislative article, which passed to second reading some time since, which seems to embrace every possible kind of corrupt or improper influence which may operate upon the mind of the legislator. The severest penalties for the violation of the provisions are imposed by the subsequent sections, and for all of these I voted. I thought then as I still think, that it goes as far as we should go. In addition to that oath and the severe penalties imposed, we have yet another oath, adopted yesterday, going a step further than that; and providing for improper nominations, and corrupt means used by candidates in procuring and imposing equally severe

penalties. I voted for that also. Now, we are asked to adopt still another oath, providing that after a member of the Legislature has served out his term of office he must make and file within thirty days in the office of the prothonotary of his district, an oath that he has fulfilled all the requirements of the other oaths or be thereafter forever disqualified from holding office. I have always understood that the army in Flanders was the worst swearing body in the world, but if this additional oath be adopted and added to the two oaths which have already received our sanction, our Legislature will certainly be a well-sworn body, and in that respect, at least, well-nigh equal to the army in Flanders.

I cannot vote for this proposition; not because I think there are too many oaths already, but because I do not think it is founded upon a proper principle, being inconsistent, in my opinion, with that freedom of intercourse which should subsist between the people and their representatives. I was struck with the great force of the remarks of my excellent friend from York, who always speaks sensibly, that there should be the most uninterrupted intercourse between the representative and his constituents, and I would not even by implication trammel that intercourse or prevent the constituent from approaching the representative with proper intentions on any and all occasions. By the oaths already adopted in this body we have guarded against corrupt influences on the part of the constituent or on the part of the member, and I repeat that I would not throw any restriction, even by implication, in the way of an unrestrained intercourse between the representative and the people whom he represents. Why should we set up the representative as a Sir Oracle and allow no access to him by any of the people he represents. Every person, the humblest member of society, has an interest in legislation, and has a perfect right to approach his representative and use every proper argument to influence his action. Surely the mere talking to a member of the Legislature upon the subject of legislation, by anyone, whether constituent or not, should not be held to be corrupt *per se*, as this oath which is now under consideration originally contemplated before it was amended by the delegate from Columbia (Mr. Buckalew.)

The analogy as drawn by my friend, the junior delegate from York, (Mr. Gibson,) between this case and that of a jury is certainly without force. The illustration, as he now calls it, would have been more apt if he had said that after a verdict is rendered the jury should be sworn that they have done all that they swore, when empaneled, they would do. No man ever dreams of such a thing. Before the jury take their seats in the jury box they are sworn to discharge their duties properly, and render a verdict according to the evidence; but no one ever dreamed of administering a subsequent oath to the effect they have so performed their duty. After a jury is sworn we assume that they will act properly, and so it should be with the legislators. My intelligent and zealous friend, the gentleman from Fayette, (Mr. Kaine,) who is chairman of the Committee upon Oaths, and who reported this oath, has referred to the oaths administered to judges of the Supreme Court of the United States, and he argues that because those judges take a certain form of oath, that therefore this amendment should be adopted. The argument is not very logical, most certainly. I would like to ask my friend from Fayette if he ever heard of a supreme judge, or any other judge, being called upon, after his term of office had expired, to swear that he had performed his duties with fidelity. He has never heard anything of the kind, sir. The whole thing is entirely anomalous in our theory and practice of government. I know of no public officer, from the highest to the lowest, from the President of the United States down to the lowest township official, who is sworn at the end of his term of office that he has not been corrupted in the discharge of his official duties. The position, to my mind, seems a very strange one. It is true that the judges are sworn, and so are jurors and everybody else, to do what is right. But when did we ever require a man to swear that he *has* done what is right, and if he refuse to take the oath, dishonor and forever disqualify him from holding any office? On principle, I appeal to this Convention to say that this is not right. Is there not something repulsive in this entire proposition? It is a kind of inquisition, a worse than Spanish Inquisition, which virtually puts a man upon the rack, and either perjure himself, or state how all his votes have been, and if he does not, by standing silent admit that he has done the things which disqualify him forever from holding any office in the Commonwealth.

For these reasons I must dissent from the conclusion arrived at by the very able delegate from York. I have no doubt of his entire sincerity; but I cannot see the efficacy that he claims will result from the adoption of this amendment. In adopting the oaths that we have already placed in the Constitution, I think we have gone as far as we need go, and to introduce this anomalous and strange oath would be in my judgment a step beyond what is proper and right, and I do not believe the people would sanction it. I have felt impelled to give these reasons why I cannot vote for this additional oath; I do not think it will accomplish anything that will not be attained by either of those we have adopted. Like the delegate from Columbia, I am a little sceptical as to the great value of these oaths and the severe penalties attached. The honest man, if not conscientious as to the great multiplication of official oaths, can take them without dread or risk, and the rascal can take them with equal if not greater facility, for he does not care how hard he swears. The field with us at least is unexplored, and I am very willing to try the experiment, with the oaths I have already voted for. Much good it is claimed will result from the imposition of these oaths, and it is said they have done good elsewhere, especially in Illinois, where the iron-clad oath, in its extreme rigidity, has been adopted in the Constitution of that State. But for the reasons I have given, I cannot with my present impressions go the length this section proposes. If it is adopted, I sincerely hope it may result in the great good its learned and eloquent advocate contends for.

Mr. KNIGHT. Mr. President: I have so far continued to vote against these stringent, iron-clad oaths, and I expect to continue to do so. We are of the people, and we have been sent here by the people in order to make a better Constitution for the people than the one under which we are at present living. When we assembled the question came up, what kind of an oath should be administered to us, and we ruled that the oath which we should take would be that we would perform our duties here with fidelity. We all took this oath, sir, each member of us, and each member knows whether he has acted with fidelity or not. But when the question comes up for us to prescribe an oath for the people who sent us here, then we put them upon a different

footing. I claim that we are just exactly of the people, no better nor worse than those who sent us here, and when we are unwilling to prescribe this oath for ourselves, we are not at liberty, in my judgment, to bind it upon others. We have already put into our Constitution two ridiculous oaths, binding actions of men before they enter the Legislature and while they are in, so that they shall not listen to anybody, and so that nobody can speak to them, which are some of the ridiculous clauses we have already inserted. And what then? Why after branding them as being corrupt and saying that it is necessary to do this to trammel them and to swear them at every point, we now propose to require them at the expiration of their labors to swear that they have done their duty in all of the many respects here specified. I am satisfied that when the question of accepting or rejecting our labors is submitted to the people, if they find all these ridiculous oaths in the Constitution, their action upon that instrument will disappoint some of us.

Mr. J. N. PURVIANCE. I move to amend by striking out all after the word "ability" in the thirty-third line, down to the word "agents" in the thirty-fifth line.

The words proposed to be stricken out were read as follows:

"I have not knowingly listened to corrupt private solicitation from interested parties or their agents, nor have I received any gift or promise from any such parties, or from any candidate."

Mr. J. N. PURVIANCE. Now I would ask that the proposition of the distinguished gentleman from York be read as it would stand if amended in the manner I propose.

The PRESIDENT *pro tem*. It will be read.

The CLERK. The oath would read, as proposed to be amended by the gentleman from Butler, as follows:

"I do solemnly swear (or affirm) that as a member of the General Assembly, I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability. I have not voted or spoken on any matter in which I had, or expected to have, a private interest. I have not done, or willingly permitted to be done, any act which would make me guilty of bribery. I have observed the order and forms of legislation as prescribed by the Constitution; and I have not knowingly voted or spoken for

any law, bill, or resolution which I knew or believed to be inconsistent therewith."

Mr. J. N. PURVIANCE. I will not occupy but a few minutes because I know the Convention is impatient and desirous of voting, but the amendment I have offered seems to take out of the oath of the distinguished gentleman from York the very objectionable feature in it, and that is, that a representative could hold no correspondence or communication of any character whatever with his constituents. I take it that that is going too far, and whilst I desire to support the proposition of the gentleman from York, yet with that in it I cannot, because I can conceive of many cases where a member would be exceedingly embarrassed in the proper discharge of his duties by not permitting honest and worthy constituents of informing him of the particular matters before the Legislature to which he wished to call his attention and ask his support or his opposition.

Now, let us make the thing reasonable and if we can get it in a reasonable shape then, like my friend from Venango, (Mr. Beebe,) I am willing to introduce this innovation in Pennsylvania. It is something novel, something new, and comes from one of the most distinguished gentlemen not only of the State of Pennsylvania but of the whole Union. If he has faith in it I am willing somewhat upon his arguments to act upon his views on this subject.

Now, I believe—and I wish the Convention to bear with me but a minute longer—I believe a great deal in oaths, and I believe more in the integrity of the human heart than many gentlemen here seem to. I have known of many cases where under the sanction of an oath and the pinch of that oath on the conscience, men of apparently careless and reckless lives would yet not knowingly and wilfully commit perjury. I recollect of a case where I drew up the application of a man for a bounty land warrant for services in the war of 1812, under the act of Congress. He knew he was entitled to forty acres. He was a plain-minded man, somewhat an uneducated man. I drew it up as he directed. I sent that on to Washington. It came back, and instead of it being for a forty acre warrant, he got a warrant for eighty acres. I was somewhat pleased at the result, sent him word to come in. He came in to town, came to my office, and I informed him that he got an eighty acre warrant instead of a forty. It seemed

to strike him; he fell back in the chair, as it were. Said he, "I am afraid I have sworn falsely, and I would not for all the land the government owns, that I had taken a false oath." "Now," said I, "Jimmy, I have taken your statement just as you made it to me, and if there is any wrong it is a mistake of you, not of me. but I tell you what I will do; I will send this warrant back to Washington, and I will say to the officer there that you know you are entitled to a forty acre warrant, but that you believe you are not entitled to an eighty acre warrant, and to cancel this warrant and send you one for forty acres." It seemed to gratify him exceedingly. I sent the warrant back to Washington. It was returned an eighty acre warrant still, and the officer wrote that upon examination of the returns made into the Department by John Hare Powell, of Philadelphia, who was his captain, or officer, he had served a few days over the three months, and that brought him into an eighty acre warrant. Then I sent for him again, and he came and was rejoiced and accepted his warrant.

This is an instance of a man, although not overly moral in his deportment, yet who would not accept that warrant because of that mistake, as he supposed, though it operated to his own benefit and was forty acres of land more than he expected he was entitled to or would get.

I have known many other cases of a similar character. I have known cases of trials where the party when called upon to give testimony would say, confessing judgment, "I cannot take that oath; I owe that man so and so."

Oaths do have their binding effect, and I am willing to vote for this if modified in the manner in which I have now proposed.

Mr. LITTLETON. I rise to call the previous question.

The PRESIDENT *pro tem*. Gentlemen seconding the call will rise.

Mr. TEMPLE. I ask the gentleman whether he is calling the previous question on the amendment or on the article.

Mr. LITTLETON. On the whole subject.

The PRESIDENT *pro tem*. It requires eighteen gentlemen to sustain the call. The Clerk will take down the names of those who second the call.

Messrs. Brodhead, Biddle, Newlin, J. Price Wetherill, J. S. Black, Corbett, Heverin, M'Clean, Broomall, J. W. F. White, Hanna, Bannan, Cronmiller, Ed-

wards, Van Reed, Funck, Reynolds, Lilly, MacConnell, Barclay, Wright, Church, and Stanton rose to second the call.

The *PRESIDENT pro tem.* The question is, "Shall the main question be now put?"

Mr. HARRY WHITE. On that I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Achenbach, Baer, Bailly, (Perry,) Bannan, Barclay, Beebe, Biddle, Black, J. S., Bowman, Boyd, Brodhead, Broomall, Brown, Calvin, Church, Corbett, Cronmiller, Dodd, Dunning, Edwards, Funck, Gilpin, Hanna, Harvey, Hazard, Heverin, Horton, Howard, Hunsicker, Kaine, Lilly, Littleton, Long, MacConnell, M'Camant, M'Clean, M'Murray, Mitchell, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Pughe, Reynolds, Rooke, Russell, Simpson, Smith, Henry W., Stanton, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Woodward and Wright—54.

N A Y S .

Messrs. Alricks, Andrews, Bailey, (Huntingdon,) Bigler, Buckalew, Bullitt, Campbell, Cassidy, Cochran, Corson, Curry, Curtin, Cuyler, Dallas, Darlington, De France, Elliott, Ellis, Ewing, Finney, Fulton, Guthrie, Hall, Hay, Hemphill, Knight, Lamberton, Landis, Lawrence, Mann, Minor, Mott, Newlin, Niles, Patterson, D. W., Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Smith, H. G., Stewart, Struthers, Temple, Turrell, Walker, Wherry, White, Harry, White, J. W. F. and Worrell—51.

So the main question was ordered to be now put.

ABSENT.—Messrs. Addicks, Ainey, Armstrong, Baker, Bardaley, Bartholomew, Black, C. A., Carey, Carter, Clark, Collins, Craig, Davis, Fell, Gibson, Green, Lear, MacVeagh, M'Culloch, Mantor, Metzger, Palmer, G. W., Parsons, Ross, Sharpe, Smith, Wm. H., White, David N. and Meredith, *President*—28.

The *PRESIDENT pro tem.* The question now is on the amendment of the delegate from Butler (Mr. J. N. Purviance.)

Mr. J. S. BLACK. Is not that amendment cut off by the previous question?

The *PRESIDENT pro tem.* The previous question operates on all future amend-

ments. The question now is on the amendment of the delegate from Butler (Mr. J. N. Purviance.)

Mr. HARRY WHITE and Mr. J. N. Purviance called for the yeas and nays.

Ten members did not rise to second the call.

The amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the amendment of the gentleman from York (Mr. J. S. Black.)

Mr. CORBETT. On that I call for the yeas and nays.

Ten members rose to second the call.

Mr. H. W. SMITH and others. I ask that it be read.

Mr. BUCKALEW. I rise to an explanation. The amendment offered by me is in the section as offered. ["Yes."]

The *PRESIDENT pro tem.* The amendment will be read.

The *CLERK* read as follows:

"Within twenty days after the adjournment of the General Assembly *sine die*, every member of the House of Representatives and every Senator whose term will expire at the next general election shall take and subscribe before some officer qualified to administer oaths the following oath or affirmation:

'I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability. I have not knowingly listened to corrupt private solicitation from interested parties or their agents, nor have I received any gift or promise from any such parties, or from any candidates. I have not voted or spoken on any matter in which I had or expected to have a private interest. I have not done or willingly permitted to be done any act which would make me guilty of bribery. I have observed the order and forms of legislation as prescribed by the Constitution, and I have not knowingly voted or spoken for any law, bill or resolution which I knew or believed to be inconsistent therewith.'

"The foregoing oath or affirmation shall be filed in the office of the prothonotary of the county in which the Senator or Representative resides, and if any such Senator or Representative shall fail to take and file said oath or affirmation within the time prescribed, (unless unavoidably prevented,) he shall be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth, and if, in taking

such oath or affirmation, it shall appear that he has knowingly sworn or affirmed falsely, he shall be deemed guilty of perjury and also be disqualified as aforesaid."

The *PRESIDENT pro tem.* The Clerk will call the roll.

The *CLERK* proceeded to call the roll.

Mr. DODD. (After having voted in the negative.) I voted inadvertently. I am paired with the delegate from Luzerne, (Mr. G. W. Palmer,) who would have voted "yea," and I would have voted "nay" if he had been present.

The *CLERK* resumed and concluded the call, with the following result :

YEAS.

Messrs. Achenbach, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Beebe, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Calvin, Campbell, Cochran, Curry, Cuyler, Dallas, Dunning, Elliott, Ellis, Ewing, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Heverin, Howard, Hunsicker, Kaine, Lambertson, Landis, Lawrence, Long, M'Camant, M'CLean, M'Murray, Mitchell, Mott, Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Russell, Smith, H. G., Smith, Henry W., Temple, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry, White, J. W. F., Woodward, Worrell, and Wright—66.

NAYS.

Messrs. Bailly, (Perry,) Biddle, Bigler, Black, Charles A., Bowman, Broomall, Church, Corbett, Corson, Cronmiller, Darlington, De France, Edwards, Horton, Knight, Lilly, Littleton, MacConnell, Mann, Minor, Newlin, Niles, Patterson, D. W., Porter, Pughe, Purviance, John N., Reynolds, Rooke, Runk, Simpson, Stanton, Struthers, Turrell, Walker and White, Harry—35.

So the amendment was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Armstrong, Baker, Bardsley, Bartholomew, Bullitt, Carey, Carter, Cassidy, Clark, Collins, Craig, Curtin, Davis, Dodd, Fell, Green, Hanna, Lear, MacVeagh, M'Gulloch, Mantor, Metzger, Palmer, G. W., Parsons, Ross, Sharpe, Smith, Wm. H., Stewart, White, David N. and Meredith, *President*—32.

["Orders of the day."]

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SEVERAL DELEGATES addressed the Chair.

The *PRESIDENT pro tem.* The orders of the day are called, and the Chair cannot recognize gentlemen. The hour of one having arrived, the Convention takes a recess until half-past three o'clock.

Mr. HAY. I rise to a point of order. We cannot adjourn until a motion to that effect has been adopted.

The *PRESIDENT pro tem.* (At one o'clock and fifteen minutes P. M.) The House now takes a recess until half-past three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

OATHS OF OFFICE.

The *PRESIDENT pro tem.* At the time of the recess the Convention had voted upon all the sections of the article on the oaths of office, and the question is on transcribing the article for a third reading.

Mr. LILLY. I move that it be referred to the Committee on Revision and Adjustment.

Mr. KAINE. I second the motion.

Mr. DARLINGTON. Was the vote taken on the section as amended?

The *PRESIDENT pro tem.* It was. The question is on the motion of the gentleman from Carbon, (Mr. Lilly,) to refer the article to the Committee on Revision and Adjustment.

The motion was agreed to.

FUTURE AMENDMENTS.

Mr. C. A. BLACK. I move to reconsider the vote by which the amendment of the delegate from Allegheny, (Mr. Guthrie,) to the seventh line of the sixteenth article, "on future amendments," was adopted.

The *PRESIDENT pro tem.* How did the gentleman from Greene vote?

Mr. C. A. BLACK. I voted with the majority?

The *PRESIDENT pro tem.* Is the motion to reconsider seconded?

Mr. PURMAN. I second it.

The *PRESIDENT pro tem.* How did the gentleman vote?

Mr. PURMAN. I voted with the majority.

Mr. LILLY. I hope the motion to reconsider will not prevail. Let the article now remain as it is, and let it go to third reading.

The *PRESIDENT pro tem.* The motion is not debatable.

The motion to reconsider was agreed to.

The *PRESIDENT pro tem.* The section will be read.

The *CLERK* read as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments, shall be entered on their Journals, with the yeas and nays taken thereon; and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers of different political parties, in every county in which such newspapers shall be published, and if in the Legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years: *Provided*, That when two or more amendments shall be submitted, they shall be voted upon separately.

The *PRESIDENT pro tem.* The Clerk will state the amendment of the gentleman from Alleghany (Mr. Guthrie.)

The *CLERK.* The amendment was to insert after the word "newspapers," in the seventh line, the words "of different political parties."

Mr. S. A. PURVIANCE. I will make a suggestion to the gentleman from Greene, whether it would not be better to insert "in all the weekly papers of the State."

Mr. C. A. BLACK. Oh no! That would be too many.

The *PRESIDENT pro tem.* The question is upon the amendment. (Putting the question.) The yeas appear to have it.

Mr. DALLAS. I call for the yeas and nays.

Mr. GUTHRIE. Mr. President; I hope that this amendment will not be voted down. I call for the yeas and nays, and I ask to be heard before the question is taken.

The *PRESIDENT pro tem.* Ten gentlemen must rise to second the call.

The yeas and nays were ordered, ten gentlemen rising to second the call.

Mr. LILLY. The question was fully debated yesterday in full Convention, and here we have just a quorum.

Mr. EWING. I trust that the Convention will hear my colleague from Allegheny (Mr. Guthrie.) He very seldom takes up time; it is something new for him, and he should be heard.

Mr. GUTHRIE. I do not desire to say anything; but I want to have a fair opportunity of having the question understood by the Convention. I desire to have gentlemen to vote understandingly on this question. I do not see why there should be any objection to authorizing and directing the publication in two papers in each county, one of each party. I do not see why gentlemen should be startled at the idea of mentioning a political party in the Constitution. We all know that parties exist, and we all know that where one party has the power—it may be one party to-day and another party to-morrow—the patronage is always given to that one side. The people on the other side never have a chance to see the legal advertisements, because you know very well that the Republicans do not take Democratic papers, and the Democrats do not take Republican papers. The Democrats do not believe what they see in Republican papers, and I know that the Republicans do not believe what they see in Democratic papers. I can see no just reason for refusing to give general publicity to any amendment that may be offered to the Constitution. I can see no good reason for it.

Mr. CLARK. Mr. President:—

The *PRESIDENT pro tem.* Debate is not in order. The yeas and nays have been ordered, and the Clerk will call the roll.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Barclay, Beebe, Boyd, Buckalew, Campbell, Carter, Cassidy, Clark, Curry, Dallas, Elliott, Ellis, Ewing, Fulton, Guthrie, Hall, Hemphill, Landis, Lilly, M'Murray, Mitchell, Niles,

Patterson, T. H. B., Patton, Porter, Purman, Purviance, Samuel A., Read, John R., Smith, H. G. and Woodward—34.

N A Y S.

Messrs. Andrews, Armstrong, Bailly, (Perry,) Bigler, Black, Charles A., Bowman, Broomall, Bullitt, Calvin, Corson, Cronmiller, Curtin, Darlington, De France, Edwards, Hanna, Horton, Hunsicker, Kaine, Knight, Lamberton, Lawrence, Long, MacConnell, M'CLean, Mann, Minor, Patterson, D. W., Purviance, John N., Reed, Andrew, Rooke, Russell, Simpson, Smith, Henry W., Stanton, Struthers, Turrell, Van Reed, Walker, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Wright—44.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Biddle, Black, J. S., Brodhead, Brown, Carey, Church, Cochran, Collins, Corbett, Craig, Cuyler, Davis, Dodd, Dunning, Fell, Finney, Funck, Gibson, Gilpin, Green, Harvey, Hay, Hazzard, Heverin, Howard, Lear, Littleton, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Reynolds, Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Wetherill, J. M., White, David N., Worrell and Meredith, *President*—55.

Mr. SIMPSON. I see that the form of this article as it appears now is the same as in our present Constitution, and I have long thought that it ought not to be exactly in the language in which it is. While I agree that an amendment upon the same subject-matter ought not to be proposed oftener than once in five years, by preventing all amendments for five years, the people of the State have their hands tied. I would therefore move to insert in the eighteenth line after the word "amendments" the words "upon the same subject-matter," so that no amendment upon the same subject-matter shall be proposed oftener than once in five years, so as to leave the door open in case it may be of emergency to put in something that may be necessary.

The PRESIDENT *pro tem*. That portion is stricken out. There is no eighteen line in the section as it stands. All after the words "submitted to" in the thirteenth line were stricken out and a manuscript amendment added.

Mr. SIMPSON. Then I withdraw my amendment.

The PRESIDENT *pro tem*. The question is on the section.

The section was agreed to.

Mr. LAWRENCE. I move that the article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

COUNTY OFFICERS.

Mr. S. A. PURVIANCE. I move now that article fourteen be considered.

The motion was agreed to, and the Convention proceeded to the consideration on second reading of the article on county, township and borough officers (No. 14) as reported from the committee of the whole.

The first section was read 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*, The Legislature may declare what offices shall be incompatible; and no sheriff or treasurer shall be re-eligible for the term next succeeding the one for which he may be elected."

Mr. DARLINGTON. I move to amend by striking out the word "county" where it occurs in four places in the second and third lines as unnecessary; so as to read: "county commissioners, recorders of deeds, surveyors, treasurers and auditors," leaving out the word "county" as part of the names of the officers.

Mr. S. A. PURVIANCE. I would say that there can be no great objection to that, inasmuch as the word "county" is triplicated there, and the amendment may as well prevail.

The amendment was agreed to.

Mr. KAINE. I move to amend by striking out of the fifth line from the word "law" down to the word "incompatible." The words are: "*Provided*, That the Legislature may declare what offices shall be compatible."

Then the section would read:

"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 be from time to time established by law; and no sheriff or treasurer shall be re-eligible for the term next succeed-

ing the one for which he may be elected."

Mr. ANDREW REED. Before a vote is taken upon this amendment I desire to say that I hope the Convention will not strike out these words. It is very well known that in the smaller counties of the State several of these officers are combined in one. The report of the Committee on County, Township and Borough Officers, as originally made to this Convention, provided that one person might hold several of these offices. That was stricken out, and the words included in the motion to strike out, made by the gentleman from Fayette, were inserted. If we say that these shall be constitutional offices, then if we strike out the words which the gentleman from Fayette asks us to do, we must have a recorder of deeds and a register of wills for each county, which, in these smaller counties, will be entirely unnecessary. I think the Convention will see the propriety of keeping this language in the section, or else adopting the section as it was reported originally from the Committee on County, Township and Borough Officers; because, unless that is done, these offices will be multiplied beyond all necessity.

Mr. KAINE. There is no use in having these words in this section at all. Providing that the Legislature may do this does not amount to anything. They have the power to do so at any rate. The Legislature will have this power, whether this section be passed in its present shape or not. They can provide what offices are incompatible; and if so, what is the necessity of putting this language into the Constitution, saying that they may do a thing which they have the power to do? That is the reason why I desire to have these words stricken out; and the objection made by the gentleman from Mifflin amounts to nothing whatever. The Legislature will have the right to say that a man shall be recorder of deeds, register of wills, clerk of the orphans' court, and hold as many other offices as there may be offices in the county—county surveyor also, if you please. They do it now; they always have done it; and they may do it again.

Mr. ANDREW REED. But they are not constitutional offices.

Mr. KAINE. They are just as much constitutional officers under the old Constitution as they are under the present one we are framing. The old Constitution says:

"Prothonotaries of the Supreme Court shall be appointed by the said court for the term of three years, if they shall so long behave themselves well."

And again:

"The recorders of deeds, registers of wills, and sheriff shall keep their offices in the county in which they respectively shall be officers."

They are just as much provided for in the old Constitution as they are in this. There is no difference in the world. There is no change whatever, as far as that is concerned, between this section and the old Constitution except putting in county surveyors.

Mr. WHERRY. I trust the amendment will not prevail. There is a great difference between the provision of the old Constitution and the present section, and the phraseology cannot remain the same. This is an imperative section fixing these officers here in the Constitution, and I can easily conceive that if the amendment is adopted it might give the Legislature some trouble in declaring the incompatibility of some of these offices. I have reason to believe that this language was placed there for the purpose at some future time of removing the care of prisoners from the sheriff. The subject was brought to the notice of the Committee on County, Township and Borough Officers. They had this point under consideration; and wisely (as I think) left the matter open so that the Legislature might at some future time establish the office of wardens of prisons as distinct from the office of sheriff.

The amendment was rejected.

Mr. BEEBE. I move to amend by striking out the words "sheriff or" in the proviso.

I see no reason why the sheriff should not be re-elected any more than other county officers, with the single exception of the treasurer, save that the old Constitution says so.

Mr. S. A. PURVIANCE. I hope there will be no change in reference to the election of sheriff. A sheriff has been ineligible for re-election ever since the organization of our government, and I regard it as a very valuable part of our system that the sheriff and treasurer shall still be ineligible to re-election. They handle large sums of money, and therefore it is necessary that they should have their accounts settled before they again have any further claims upon the patronage of the public.

Mr. BOWMAN. I hope this amendment will not prevail. If it does and a sheriff is made eligible to re-election, everybody knows that with the power he has in his hands, he will travel all over the county and use that power for the purpose of securing his re-election. He will extend the writs that he has against certain parties, and he will enforce the writs that he has against others. He can favor one man and injure the next, and this will be a dangerous power with which to oppress the people confided to one man if this amendment should prevail.

Mr. BEEBE. Cannot the treasurer travel over the county and work for his re-election, too?

Mr. BOWMAN. No, sir. The treasurer cannot do so. The sheriff sees more men in one day than the treasurer does in a month. The sheriff is continually traveling, and if this amendment is adopted he will be on an electioneering tour all the time.

The amendment was rejected.

Mr. SIMPSON. I move to amend by striking out in the fifth and sixth lines the words "what offices shall be incompatible, and," and inserting the words, "which of said offices may be held by the same person, but."

The proviso will then read :

"Provided, The Legislature may declare which of said offices may be held by the same person, but no sheriff or treasurer shall be re-eligible for the term next succeeding the one for which he may be elected."

I notice that the present Constitution is very precise in regard to this. It says : "That the Legislature shall provide by law the number of persons in each county who shall hold such offices, and how many and which of said offices shall be held by one person."

That is the language of the present Constitution. This amendment is shorter and I think expresses exactly the same idea.

Mr. CORSON. Mr. President : If the gentleman will reflect a moment, he will find that the proviso in the section as reported by the committee, is much broader than that which he would insert, for he only permits the Legislature to say how many of these offices may be held by one officer whilst this section provides that the Legislature may declare what offices, whether they be named in this section or not, are incompatible. Therefore I hope

the section will be adopted in that respect.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from the city (Mr. Simpson.)

The amendment was rejected.

Mr. WRIGHT. I move to amend by inserting after the word "sheriff" in the sixth line the words "district attorney." I do that because in our county and in some of the larger counties the office of district attorney is about as valuable as any other that we have, and he makes a great many thousands of dollars. I do not know of any reason why they should be left out. In the smaller counties this office is mostly held by young men and they give their whole time to it. I therefore move to insert "district attorneys" in the proviso as to ineligibility to re-election.

The amendment was rejected.

Mr. DARLINGTON. I now move to amend in the fifth line by striking out the word "provided." It is perfect without that.

Mr. KAINE. That ought to come out.

The amendment was agreed to.

Mr. KAINE. I move to amend by striking out all after the word "Legislature," in the fifth line, to the word "incompatible," in the sixth line, and insert :

"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."

That is precisely the old Constitution. The third section of the sixth article of the old Constitution is this :

"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."

The question being put, a division was called for, and the ayes were twenty-six.

Mr. DARLINGTON. I ask for the yeas and nays on this question.

Mr. KAINE. I hope the yeas and nays will be taken.

The yeas and nays were ordered, ten gentlemen rising to second the call.

Mr. LILLY. These amendments were all proposed in the committee of the whole, and voted down, and it is not worth while to take up the time of the Convention by offering them here.

Mr. S. A. PURVIANCE. May I be permitted to ask the gentleman from Fayette

a question? Does his amendment propose to make any change from the substance of the section?

MR. KAINE. No, sir.

MR. S. A. PURVANCE. Then I have to say that the language used in the section is not half as long as that used in the amendment.

MR. KAINE. I did not understand the gentleman's question. I do propose to make a change, because the matter before us says the Legislature "may." I want it that the Legislature "shall" do this thing when required, as it is in the old Constitution.

MR. WHERRY. If that be the only purpose of the gentleman from Fayette, he can accomplish it by changing the word "may" to "shall." But it is clear to my mind that the section as drawn is much broader in its intention as well as briefer in its statement than the proposition of the gentleman from Fayette. I shall go with him to change "may" to "shall" if he will retain the phraseology here.

The President *pro tem*. The yeas and nays have been ordered, and the Clerk will call the names of delegates on the amendment.

MR. KNIGHT and others. Let it be read.

The Clerk read the amendment.

MR. TURRELL. I am sorry to differ with the gentleman from Fayette, but it does seem to me that his language is not half as definite, precise and clear as the language of the section.

The President *pro tem*. The Clerk will call the names of delegates on the amendment of the gentleman from Fayette (Mr. Kaine.)

The question was taken by yeas and nays with the following result:

YEAS.

Messrs. Bigler, Black, Charles A., Curtin, Dallas, Darlington, Fell, Hanna, Hemphill, Howard, Hunsicker, Kaine, McClean, Mann, Patterson, D. W., Reynolds, Russell, Simpson, Smith, H. G. and Smith, Henry W—19.

NAYS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Barclay, Beebe, Biddle, Bowman, Buckalew, Calvin, Campbell, Carter, Cassidy, Clark, Corson, Cronmiller, De France, Dodd, Edwards, Elliott, Ellis, Ewing, Fulton, Guthrie, Hall, Hazard, Horton, Knight, Lamberton, Landis, Lawrence, Lilly, Long, MacConnell, M'

Murray, Minor, Mitchell, Niles, Palmer, G. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Rooke, Stanton, Stewart, Struthers, Turrell, Walker, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Wright—61.

So the amendment was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Black, J. S., Boyd, Brodhead, Broomall, Brown, Bullitt, Carey, Church, Cochran, Collins, Corbett, Craig, Curry, Cuyler, Davis, Dunning, Finney, Funk, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Lear, Littleton, MacVeagh, McCamant, McCulloch, Mantor, Metzger, Mott, Newlin, Palmer, H. W., Parsons, Pughe, Ross, Runk, Sharpe, Smith, Wm. H., Temple, Van Reed, Wetherill, J. M., White, David N., Woodward, Worrell and Meredith, President—53.

MR. WHERRY. I now move to strike out the word "may" and insert the word "shall" before the word "Legislature," in the fifth line.

The amendment was agreed to.

MR. CORSON. The amendment just adopted renders it necessary to strike out the words "shall be," at the end of the fifth line, and insert the word "are," so that it will read: The Legislature shall declare what offices are incompatible," instead of "the Legislature shall declare what offices shall be incompatible." I therefore move to strike out the words "shall be," at the end of the fifth line, and insert the word "are."

The amendment was agreed to.

MR. J. W. F. WHITE. I move to strike out the word "auditors," in the third line. I believe the word "county" has already been stricken out.

A single word in explanation of this amendment. The language of this section is imperative. It will require every county in the State to have an auditor as well as the other officers mentioned here. The word "auditors" is not found in our present Constitution, and in the city of Philadelphia and in Allegheny county we have no auditors. We have in Allegheny county a different system, the comptroller being the main fiscal officer of our county. Several years ago county officers were abolished in our county, and I apprehend they were abolished in this city many years ago. Having an entirely different system, which with us has work-

ed much better than the old system, and at the instance of many of our old citizens, all that I conversed with, and especially of our comptroller, who understands the affairs of our county very well, we do not want the old system of county auditors to be restored in our county, and I do not suppose that any one wants it restored here in Philadelphia. There is no necessity therefore of having the word "auditors" here, making it imperative in every county of the State to have auditors. If they are needed in other counties, or wherever they are needed, the Legislature can furnish them as they are now furnished. Neither will it abolish auditors where they exist by leaving out the word here. The present laws will operate until they are changed. I hope this amendment will prevail.

Mr. S. A. PURVIANCE. I trust the word "auditors" will not be stricken out. That is an office common to all the counties of the Commonwealth, except perhaps Allegheny and the city of Philadelphia. I see no difficulty to result from retaining the word "auditors," and if the gentleman chooses we may insert the words, "or comptroller," the office which is substituted in Allegheny for that of auditor. But, sir, I know that there are a class of people who complain somewhat of the change that has taken place in Allegheny county because of the fact that the comptroller's accounts are not as well settled as those that are settled up by auditors. In all the other counties of the Commonwealth the people elect three auditors, and they settle the accounts of the county; but this comptroller of Allegheny seems to have absolute control of the funds of the county without any proper accountability. I will say this, however: If my colleagues from Allegheny county are all agreed on the subject that auditors should not be made applicable to the county of Allegheny, I have no objection to any suggestion or amendment that will carry that into effect; but inasmuch as auditors are common to all the other counties, it ought to be one of the offices named in this section.

Mr. MACCONNELL. Mr. President: I think it the correct practice to have different persons to settle public accounts from the parties who expend the money. That has been the usual practice. Auditors were abolished in Allegheny county some years ago and a comptroller appointed; that is to say, the office of auditor in Allegheny county was abolished

and a comptroller appointed. He and the commissioners sign the warrants for the money that is paid out. They are all together; they join in expending the money; and they together or perhaps the Comptroller, settles the accounts. They may be well settled, for anything that I know; but I follow my colleague (Mr. S. A. Purviance) in saying that I know there are complaints on that score. I think it will be safe to have the accounts audited by somebody else than the gentlemen who have the expenditure of the money. If they expend the money, they will be sure to pass the accounts, whereas a different set of officers would be very likely to inspect the matter and perhaps not pass accounts that the parties expending the money would pass.

Further, Mr. President, if those who have the expending of the money know that there is nobody to come after them to inspect the accounts, they will not be as circumspect, or at least they will not be as likely to be as circumspect, as they would be if they knew there were persons coming after them to inspect their accounts.

For these reasons, I shall vote against striking out the word "auditors."

Mr. EWING. Mr. President: As this seems to be an Allegheny county question, and gentlemen are giving their experience, I will state what I understand in regard to the position of affairs in our county.

About twelve years ago, as near as I can recollect, the system was changed in Allegheny county. Prior to that time we elected three auditors, as they do in other counties. Those auditors, as a general rule, were about on a par with the county commissioners, and usually were men who would not be trusted by private parties to settle an account of \$1,000 in items for debt. There was universal complaint by all, except what was known as the "court house ring" and the collectors of taxes. There was a very bitter fight to get that change made, and a very great outcry; but it was found in the end, when it was accomplished, that the only opponents of it were the tax collectors and the officers around the court house, who had their accounts to settle, and I do not think that there has been any change in the past fifteen years in Allegheny county that has met such a universal approval of the people of the county as that change from auditors to a county comptroller. Practically the change is this: Instead of

electing three indifferent men, we have elected one excellent, responsible man, and a competent accountant. We have now our second comptroller within that time, and serving his second term. One man has served three or four terms, and another has served one term and been re-elected.

I have heard complaints in regard to the comptroller, who has the power of the auditors. I heard them from clerks of the quarter sessions at certain times, soon after the comptroller was appointed. They had been in the habit of filing bills which were illegal and unjust, and the comptroller would not allow them. I have heard of complaints from various officers of that sort who wanted to extort from the county, and of men who wanted to get bills passed that they could not get passed when there was a strict accounting officer, as we have had under our present system; but, until I heard it a few days ago from my friend who has just taken taken his seat, I never heard of any complaints from any citizen of the county. I am well satisfied that a return to the old system of county auditors would cause very great dissatisfaction in the county among the best business men, and among almost all classes of our people.

Now, the comptroller, as I said, is one man instead of three, and he has somewhat greater powers than the auditors had; it is true. All the accounts have to go through his hands. He is a check on the commissioners; he is a check on all parties who want to pass extravagant bills, and he has to settle his accounts just as an auditor has. He does not get hold of any money whatever. He is a mere auditor, as it were, with very considerable powers in determining what taxation shall be levied, and examining into all accounts. He publishes the county's accounts each year. That is submitted to the court of common pleas and approved or objections made to it, as may be, and it is published in the papers item by item. There is precisely the same method of reaching his accounts that there is of reaching the transactions of auditors. For one, I hope that the section will be modified, so that it will not be essential to have an auditor in all the counties.

Mr. HANNA. Mr. President: Of course I cannot speak for the counties in the interior; but if it is held that this section

would apply to the city of Philadelphia. I think I can speak for my colleagues in saying that we do not need any such officials as county auditors. Section six in this same report provides that "three county commissioners and three county auditors shall be elected in each county and shall serve for three years." I take it that would apply to the county of Philadelphia. Twenty years ago the office of county auditor was abolished in the county of Philadelphia, and to the entire satisfaction of the community because we thereby abolished three officials who had manipulated the affairs of offices in numerous instances, to their benefit and profit. In their stead we were authorized to elect a city comptroller, under the provisions of the act of consolidation. This single individual is perhaps the most valuable officer in the whole county. Every voucher issued by every department of the city government must be approved by the city comptroller, and before he countersigns any voucher he ascertains first whether an appropriation has been made for that purpose, and secondly, whether the appropriation has been exhausted. That officer constitutes the best safeguard we can have upon the finances of the city. He has proved himself so, in hundreds of instances, and frequently that officer has prevented not only extravagant outlays of money, but unauthorized expenditures. Now, sir, we should have no check upon three county auditors, and that perhaps is the greatest reason which led the city of Philadelphia to ask for the change which was effected in 1854. Then the office of city comptroller was established, and ever since that time it has worked to the entire satisfaction of the community.

I do trust that although the gentlemen from the interior may think it necessary for them to have auditors as a part of the official machinery of their counties, the city of Philadelphia may be excepted, as I am sure we need no such official. I trust sir, that unless some such exception be made, the section will be voted down.

Mr. HUNSICKER. I only desire to say a word. If this amendment of the gentleman from Allegheny prevails the symmetry of the whole article will be destroyed. If there is any virtue in the principle of minority representation, I know of no better field for the trial of that principle than in the counties of Philadelphia and Allegheny.

Mr. HANNA. Will the gentleman allow me to interrupt him?

Mr. HUNSICKER. Yes, sir.

Mr. HANNA. I only want to remind him that we have no county auditors.

Mr. HUNSICKER. No; but you have three county commissioners. Now, section six of this article provides that three county commissioners and three county auditors are to be elected in every county, and in voting for these officers no voter shall vote for more than two. It is well known that if the county commissioners and county auditors are all of the same political party that the county commissioners spend the money and the county auditors vouch the accounts. But if there is a watchman in each place, a watchman in the board of county commissioners and a watchman in the board of county auditors, the majority control the policy and control the expenditures of these boards, and the minority man is there in each instance to warn the public against improper expenditures and against the allowance of improper accounts. I therefore trust that the Convention, if they are in earnest in trying the minority principle, will certainly vote down the amendment proposed by the gentleman from Philadelphia.

Mr. HARRY WHITE. I move to amend the amendment by inserting the words "or comptroller" after the word "auditor."

The PRESIDENT *pro tem*. That would not be an amendment to the amendment.

Mr. J. W. F. WHITE. I will withdraw my amendment in order to enable the delegate from Indiana to offer his.

Mr. HARRY WHITE. I now move to amend by adding the words "or comptroller" after the word "auditor."

I will just explain to the delegates who do not understand this question—

Mr. LAWRENCE. Every one of them understands it now. [Laughter.]

Mr. HARRY WHITE. This simply leaves the Legislature to regulate this matter for all counties, and where counties have controllers the provision will apply to them.

Mr. HUNSICKER. The objection that I have to this amendment is that there will be but one controller in the city of Philadelphia and but one controller in the county of Allegheny, and that would still destroy the symmetry of this article; because there will be three controllers in every other county of the State, and these three controllers will be elected in the same way in which the auditors are se-

lected. I do not care what you call them, whether they are called auditors or whether they are called controllers, the duties of the two officers are the same. They are to audit the accounts of the county commissioners.

Mr. J. PRICE WETHERILL. I hope the gentleman from Montgomery will certainly allow the delegates upon this floor, from the city of Philadelphia and from the county of Allegheny, to know and to say what is best suited for the government of their respective counties. In the city of Philadelphia it is well known that we have a variety of departments, and that the expenditures of our moneys is made through these departments. These departments are supervised by committees of councils, and the departments of councils by and with the consent of the committees examine, audit and correct every bill passed by the heads of the departments. The duty of the controller of the city of Philadelphia is simply to see that the appropriations made by these departments are not overdrawn and that the bills are correctly made out, the amounts drawn are kept within the limits of appropriations, and at the same time to exercise a supervision over the finances of the city in connection with the commissioners of the sinking fund, of which he is one by law. The whole duties of the controller in this city are entirely and essentially different from those of any county auditor in any other county of the State.

Therefore, I hope that inasmuch as the gentlemen upon this floor who represent these two cities know certainly what the wants of these cities are much better than the delegate from Montgomery can possibly do, this amendment will be agreed to and the words "or controller" will be inserted.

Mr. HOWARD. I hope the Convention will allow this amendment to prevail. The people of Allegheny have tried this plan of auditors for a great many years, and they found it was a very loose way of doing business. In fact there was very little system about it. We could hardly understand the state of our accounts, from time to time, but by a change from the auditing system to that of a controller, and by the selection of a competent officer the people in our county have been able to correct this condition of things. They have as county controller a good accountant, a man capable of taking charge of the books, and keeping the financial matters of the

county straight. So well has the system worked that I have never heard a word of complaint uttered by any single person in the county against the change. Before the change was made, year after year, complaints were made of the miserable and shiftless way in which business was conducted under the old county auditors' plan. The system of the county auditors may work very well in smaller counties, in less populous districts, but in a place like the city of Philadelphia or like the county of Allegheny, where an immense amount of money is to be expended, there is a necessity for an office where there is a regular and scientific mode of keeping the books, in order that everything may be kept straight and the people may know at any time by applying at the controller's office precisely the state of the affairs of the finances of the county. I cannot see any reason why this amendment should not prevail. The delegate from Montgomery thinks that we should not spoil the symmetry, as he calls, it of this section, for fear that this plan of cumulative voting in some way will not work right. We care nothing about the plan of cumulative voting. We want a good, responsible, competent officer to keep the books of our county, so that we may understand our financial matters. We have been enabled to do that since we have had a county controller, and that is all we want. We pay him a liberal salary, and in that way we secure and retain the services of a good man.

Mr. S. A. PURVIANCE. For the purpose of ending this controversy and allowing to be incorporated in this section what will probably settle all difficulties, at the suggestion of many of the members around me, I am willing to allow the words "or comptroller" to be added to my amendment.

Mr. HUNSICKER. I have no objection to it.

The PRESIDENT *pro tem*. The question is upon the amendment.

The amendment was agreed to.

Mr. KAINE. I offer the following amendment, to come in at the end of the section :

"All such officers shall keep their offices in the county town of the county in which they respectively shall be officers."

Looking over this article, I find there is no provision of that kind in it, and it is necessary that it go in. In the old

Constitution there is a separate section. The fourth section of the sixth article in the old Constitution provides that :

"Prethontaries, clerks of the peace and orphan's courts, recorders of deeds, registers of wills and sheriffs shall keep their offices in the county town of the county in which they respectively shall be officers, unless the Governor shall, for special reasons, dispense therewith for any term not exceeding five years after the county shall have been erected."

I have put "treasurer" in this amendment. This will make it shorter and it is just as appropriate as a part of this section, as it will be to put it in anywhere else as a separate section.

Mr. S. A. PURVIANCE. The Legislature has, as a general thing, made ample provision for all the officers covered by the amendment of the gentleman; but there are some offices, and one which I can refer the gentleman to, as to which it would be very onerous to require the officer to live in the county town; that is the county surveyor. He rarely ever lives in the county town, and he does not receive in many of the counties fees enough to authorize him to remove from his farm to the town.

Mr. NILES. Or the district attorney, either.

Mr. S. A. PURVIANCE. Or the district attorney either. Therefore it would be better to leave that matter to the Legislature to regulate.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. T. H. B. PATTERSON. I move to amend the section by inserting in the fifth line after the word "law" the words :

"Shall be elected at the general election, and shall hold their offices for the term of three years, beginning on the first Monday of December next, after their election or until their successors shall be duly qualified."

I wish to say to the Convention that this is not any amendment in substance. It is not really changing this section at all; it is consolidating the second and eighth sections into it, and in that way saves about six or eight lines and saves two sections of the article. I do not propose any change in the substance of the article at all. If the delegates will look at it, they will observe that this is in the exact language of the second and eighth sections, only omitting those words which are repeated. In that way we save two sec-

tions, and consolidate the substance of those two sections, the second and eighth, with the first. I think, if delegates will notice it, it will make the article much clearer and save six or eight lines.

Mr. S. A. PURVIANCE. I hope the amendment of my colleague will not prevail. The first section contains simply the announcement of the creation of the offices which are to exist in the several counties. The second section contains a separate and distinct principle, and that is as to how these offices shall be filled, whether by appointment or by election.

Therefore I object to intermingling this section with the second section and thus encumbering it more than it has been. I hope the amendment will be voted down.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was rejected.

Mr. EWING. I wish to call the attention especially of the chairman of this committee to one matter here that is essentially different from the Constitution of 1837, and also of 1790 and 1776. The section as reported does not make ineligible a sheriff who may have been appointed. Now, there will be no doubt cases, as there have been heretofore, where a sheriff will be appointed for an unexpired term, and I think that the old Constitution properly provides for that case as well as where he is elected for a full term. I would not permit a sheriff in any case to succeed himself, whether appointed or elected, and I should like to see the provision of the old Constitution retained. By the Constitution of 1776 sheriffs were not allowed to succeed for four years after they had been elected or appointed, and by the Constitutions of 1790 and 1837 they are not allowed to be twice chosen or appointed in any term of six years. The matter has been the subject of litigation on one or two occasions, and I should like to see the words "or appointed" added after "elected" in the last line. The same evils occur in the case of an appointed sheriff.

The PRESIDENT *pro tem*. Does the gentleman make a motion to amend?

Mr. EWING. I make a motion to amend. I move to add the words "or appointed," after the word "elected," in the last line.

The amendment was rejected, the ayes being thirty-one—less than a majority of a quorum.

The PRESIDENT *pro tem*. The question recurs on the motion as amended.

The section as amended was agreed to.

The CLERK read the next section as follows:

"SECTION 2. County officers shall be elected at the general elections, and shall hold their offices for the term of three years, if they shall so long behave themselves well, and until their successors shall be duly qualified. All vacancies shall be filled in such manner as the Legislature may direct."

Mr. DARLINGTON. I move to amend by striking out all after the word "filled" and inserting:

"By appointment to be made by the Governor, to continue until the next general election and until successors shall be chosen and qualified as aforesaid."

This is precisely the substance of the existing Constitution as to filling vacancies in these offices. There must be some mode. None has been found more convenient than appointment by the Governor for the unexpired term until the next election. I submit for the consideration of the Convention that it would be better to retain it.

Mr. BUCKALEW. There is a provision that the Governor shall appoint all officers whose election shall not be otherwise provided for by law. The Governor never appoints some county officers; he may appoint the prothonotary, register, or recorder, and this will only introduce confusion in the present law.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Chester.

The amendment was rejected.

Mr. HARRY WHITE. I move to strike out all after the word "qualified," in the fourth line, and insert:

"Vacancies in any of the said offices shall be filled by appointment, to be made by the Governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid."

I was handed this amendment by the distinguished delegate from Philadelphia, (Mr. J. Price Wetherill,) who is not here. He was going to offer it himself, and I offer it in his absence.

Mr. WORRELL. I rise to a point of order. It is the same amendment as the one we have just voted down.

Mr. HARRY WHITE. I did not hear the amendment offered by the delegate

from Chester, but I believe this is in different words.

The *PRESIDENT pro tem.* The delegate from Indiana moves to strike out all after the word "qualified," in the fourth line, and to insert what has been read.

Mr. WORRELL. I withdraw the point of order.

Mr. HARRY WHITE. Just one word as to the amendment. It preserves the policy which has obtained in government thus far. I think it is wise and proper it should be so. If you change the old policy in this regard you will authorize the Legislature to themselves elect, or repose possibly in the courts the filling of certain vacancies, which ought not to be done. I submit that the Chief Executive of a great Commonwealth like this should have some power. He has little enough power now. It has never been abused in the past and I submit that he is a proper repository of it in the future. Therefore I am in favor of retaining the old provision on this subject.

Mr. S. A. PURVIANCE. I hope this amendment will not prevail. This subject was well considered by the committee, and the language used, "that all vacancies shall be filled as may be provided by law," are the proper words to be used. It will be observed that we are here providing for a number of officers, not one. We are providing for officers some of whom are appointed by the courts, and some elected by the people, and therefore when a vacancy arises we provide for a general law, which will doubtless be passed in furtherance of this Constitution, in which provision will be made for all these vacancies. We think therefore that this clause as it is now in the report ought to remain.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Indiana.

The amendment was rejected.

Mr. BUCKALEW. I move to amend by inserting after the word "vacancies," in the fourth line, the words "not herein provided for." That amendment is necessary in order to harmonize with the sixth section. The appointment is fixed there in the court of common pleas.

Mr. S. A. PURVIANCE. I would suggest to the delegate from Columbia that he change the wording a little, and make it "not otherwise provided."

Mr. BUCKALEW. Certainly.

The *PRESIDENT pro tem.* The amendment will be so modified.

The amendment was agreed to.

Mr. ANDREW REED. I move to amend by inserting after the word "years," in the second line, the words, "except county treasurers, who shall hold their office for the term of two years." The effect of this amendment will be to preserve the law as it is now. The committee reported that the Legislature should fix the terms of these offices, but in committee of the whole that was struck out and the term made three years. Now, if the term of the county treasurer is made three years, in the case of unseated lands, one county treasurer may have two sales in his term and the next only one. I think it would be better to preserve the law as it is now.

Mr. TURRELL. We started out in this Convention with the idea of preserving or creating some sort of uniformity as far as it was possible to do, and I hope that we shall adhere to that idea as far as it is expedient. I can see no reason why there should be an exception made in this case. The suggestion in relation to unseated lands in connection with the county treasurer amounts to very little now, because that business is pretty much done with, and is "growing smaller by degrees and beautifully less," as suggested by the gentleman from Columbia (Mr. Buckalew.) I hope we shall adhere to the principle of uniformity.

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Mifflin (Mr. Andrew Reed.)

The amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the section.

The section was agreed to.

Mr. BOWMAN. I move to reconsider the vote by which the first section was adopted for the purpose of striking out the word "re-eligible." I doubt very much whether there is such a word to be found in the English language.

Mr. BUCKALEW. I suggest to the gentleman to withdraw his motion and allow that matter to be regulated by the Committee on Revision and Adjustment.

Mr. BOWMAN. Very well; I withdraw the motion.

The *PRESIDENT pro tem.* The next section will be read.

The CLERK read as follows:

SECTION 3. All county officers who receive compensation for their services shall be paid by salary to be prescribed by law, and all fees attached to any county office shall be received by the proper officer for and on account of the State or county, as may be directed by law: *Provided however,* That

the annual salary of any such officers shall not exceed the aggregate yearly amount of fees collected by him.

Mr. LAMBERTON. I move to amend by striking out the words "*Provided, however, That,*"

The amendment was agreed to.

Mr. EWING. I should like to ask the chairman of the committee whether that last clause would cover a case where an officer has clerks and those clerks have to be paid? Would the clerks be entitled to be paid by the county over and above the fees collected from the office and let the chief officer take all the fees for his salary? I think that would be so under the act of Assembly that we now have for Allegheny county. I think the chief officer might take the entire fees and the clerks be paid by the county.

Mr. KAINE. I suppose it is doomed that this section shall pass the Convention, but I desire to say a word in opposition to it. I do not think the people of Pennsylvania are prepared for so radical a change as this. Since the formation of the government all the officers in the several counties of the State have been paid by fees. Now, to change that entire system and make every office in every county of the State, prothonotary, sheriff, recorder of deeds, register of wills, clerk of the orphans' court, clerk of court of quarter session, and every other office a salaried one will make such a change as the people of this Commonwealth, I know, never contemplated when they voted for the calling of this Convention. The people of the State have been used to this fee system for a hundred years, and to change it now will require a system that I think we are not prepared to enter upon. After the adoption of the report to-day in regard to oaths, under which all officers will be sworn that they will take no fees except those authorized by law, I think there will be no trouble, or very little at least, from the complaint which has been made in Philadelphia, and perhaps some other counties in the Commonwealth, against officers for taking illegal fees. I do not intend to go into an extended argument on the subject, but merely to repeat that I think it is a change that ought not to be made. We have got along under the old system very well; the people are acquainted with it; they understand it; and we had better let it alone.

Mr. STRUTHERS. I move to amend the section, by striking out in the first and

second lines the words "who receive compensation for their services." Those words are of no use there. Of course the officers of the county are all to be paid.

Mr. S. A. PURVIANCE. I have no objection to that.

The amendment was agreed to.

Mr. S. A. PURVIANCE. In the latter part of this section there would seem to be an omission that ought to be supplied. The provision now reads: "That the annual salary of any such officer shall not exceed the aggregate yearly amount of fees collected by him." I desire to insert the words "and his clerks" after the word "officer" in the fifth line.

SEVERAL DELEGATES. No; no.

Mr. S. A. PURVIANCE. Oh, yes, that is right. Otherwise, the chief officer might be paid by the fees, and the clerks by the county.

Mr. J. W. F. WHITE. I should like to have this section divided.

The PRESIDENT *pro tem*. The question now is on the amendment proposed by the delegate from Allegheny (Mr. S. A. Purviance.)

Mr. J. W. F. WHITE. I will make the remark that I was going to make. I have very grave doubts about the propriety of this proviso being in the Constitution at all, and that is the reason why I should like to have the section divided. It is very difficult to fix up this proviso properly. Besides, I do not think it ought to be in the Constitution. Let the Legislature say what the compensation of these officers shall be. If in some new county, or some organization, they may want to fix the salary of an officer perhaps a little in advance of what the fees might be, why should we say in the Constitution that they shall not do so? I think the great thought of the section is that county officers shall receive a compensation to be paid by salaries and not by fees. That is all proper enough for a section of the Constitution; it establishes a great principle; but why shall we add to that, that no officer's salary shall exceed the amount of fees he may receive? While it might be very proper as a general rule for the Legislature, and perhaps they might adopt it as a law, I see no great necessity for inserting it in the Constitution, and I can imagine cases where it might be objectionable.

Mr. MACCONNELL. I suggest to the gentleman to move to strike out that part of the section.

The PRESIDENT *pro tem.* There is an amendment now pending.

Mr. HALL. I should like to inquire of the chairman of the committee what the salary of a county commissioner or a county auditor would be under the latter clause, inasmuch as they are not paid fees at all?

Mr. S. A. PURVIANCE. They are paid *a per diem*.

Mr. HALL. They receive no fees.

Mr. S. A. PURVIANCE. But they are paid *a per diem*,

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Allegheny to insert after the word "officer" in the fifth line the words "and his clerks."

Mr. HAZZARD. I should like to know in what manner we can adjust these fees. What year of their fees would you take to fix the salary by the fees? Take, for instance, justices of the peace. One justice in a township might be more popular, better qualified than another in the same township, and the people might bring more business to him, and in a year or two his fees would be considerably more than those of another justice in the same township, and from what year of his fees will the aggregate be made up? It seems to me it would be a very hard thing to adjust.

Mr. S. A. PURVIANCE. Allow me to state to the gentlemen that the clause we are now considering relates to county officers, not to township officers, not to justices of the peace.

Mr. HAZZARD. Very good; the same argument will apply to them. One year a sheriff might do immensely more business than in another. In a time of great commercial difficulties there would be more sheriffing to do and his fees might be considerably larger than in the first and last years of his office; and so of every one of these officers. There are some times when there is a great deal to do in a recorder's office, and at other times very little. That frequently takes place in those counties where a large tract of land contiguous to a town is laid out into town lots, and there are a great many more deeds than usual to record; it may be for a year or two. It will be very difficult to fix the salary according to those fees, for they will vary a great deal during the term of office. Adjoining the city of Pittsburg they are laying out suburban towns, and the recorder's office is overflowing with business just now. It is so

in our county. They are laying out contiguous land to our little town, and in that office the fees are very heavy just now. I do not know that the county commissioners would get very much. They are paid a *per diem*. I think the recorder and the prothonotary would be in the very same way. As I remarked a moment ago, in times of commercial difficulty when many judgments are entered and other business is pressing, the fees might be considerably larger in one of the years of the term than they would be in another, and the adjustment would be very difficult indeed.

The PRESIDENT *pro tem.* The question is on the amendment to insert, after the word "officer" in the fifth line, the words, "and his clerks."

The amendment was agreed to, ayes thirty-seven, noes not counted.

Mr. LITTLETON. I offer the following amendment, to come in at the end of the section as a proviso:

Provided, however, That the provisions of this section shall not apply to the persons now in such offices, during their present existing terms.

SEVERAL DELEGATES. That belongs to the schedule.

Mr. LITTLETON. I am informed by gentlemen that this is a proper clause to come in the schedule. I have no disposition to press it at this time, and if that is the general opinion of course I withdraw it.

The PRESIDENT *pro tem.* The amendment is withdrawn.

Mr. DARLINGTON. I move to amend in the fifth line by striking out the word "annual," and the word "any," in the same line, and in the sixth line, by striking out the words "aggregate yearly," between "the" and "amount of fees," and inserting the word "annually" after "fees." It is to improve the phraseology of the section merely, and make it read: "The salary of such officer and his clerk shall not exceed the amount of fees annually collected by him."

Mr. J. W. F. WHITE. I trust that before this concluding part of the section is adopted the Convention will look seriously where it will lead. Take the amendment offered by the delegate from Chester (Mr. Darlington.) The officer is to get no more than the fees received during the year. In some of these offices all the fees are not paid just at the time the work is done. Some years the fees received are a great deal more than other

years; in some years the salary of the officer would be less than it would be other years; and a good many fees are coming in after an officer goes out of office that were earned by him while he was in office.

Why should we put such a clause in the Constitution? The very trouble and difficulty we have here in trying to adjust this last part of the section shows the impropriety of trying to fix it in the Constitution. I think there can be no doubt that the Legislature would try to regulate the salaries of the various officers so as not to exceed the average amount of fees received in the office; but if we have this clause, there is uncertainty about the salary of every county officer, a jumbling up and a mixing up of fees and services by succeeding officers.

Besides that, I call the attention of the delegates to another feature of this section. That is the amendment proposed by the delegate from Chester. The salaries of all county officers and their clerks shall not exceed the fees annually received by them. Some county officers receive no fees at all; there are no fees attached to their offices. How will you make the salary of such an officer? Must the Legislature go to work and create a schedule of fees in order to pay such officers? County commissioners receive no fees. There are no fees attached properly to their office, or to the treasurers' office. Why not have just the principle enunciated that they shall receive salaries and that all fees that go to their offices shall be paid into the county or State treasury, and not try and fix up a fee bill or something that will cause trouble or difficulty to the Legislature or to the officers themselves.

I hope therefore that this amendment will be voted down and that when a division is called on the section or this concluding part of it, it will be voted down.

MR. S. A. PURVIANCE. As by the preceding part of the section, fees are to be received by the proper officers on account of the county; and then as the Legislature is to fix the salaries, I must confess that I do not see any strong necessity for retaining the proviso. Therefore I am willing that the amendment suggested by the gentleman should be carried, striking out the last line.

MR. ANDREW REED. I trust the Convention will not strike out the proviso.

The PRESIDENT *pro tem*. That is now the question before the Convention. The

question is on the amendment of the delegate from Chester (Mr. Darlington.)

MR. ANDREW REED. I am opposed to the amendment of the delegate from Chester. However, I do not see that it makes any very great difference whether it is adopted or not. The salary of an officer means the compensation which he receives for a fixed period of time, and that will apply to a *per diem* as well as to an annual salary. I think the word "annual" should be left in, and that means that the annual salary shall not exceed the amount of fees that he would receive during that particular year.

I do not see the difficulty which my friend from Allegheny (Mr. J. W. F. White) sees in this. He states that the fees may not be collected in the year. That is true now. They are not collected now. So the officer will be no worse off than he is under the present system. An officer that is paid by fees does not get them all now in the year, but gets them afterwards. It makes them no worse than now. Therefore there is nothing in that. But if we strike out this, there are certain offices in these small counties, say district attorneys, that perhaps do not get fifty dollars or more than one hundred dollars in a year, and if an annual salary is to be prescribed, the Legislature will fix it at an even sum for all, say five hundred dollars or six hundred dollars; and if we saddle upon the counties of the State this increased indebtedness which will take the county money to pay for it, we shall load down this Constitution until it will be rejected.

The object of this salary was, it is true, to provide for the large counties where it is reported that the large amount of fees that are received by the officers create corruption; but I say it does no injustice to the other counties; they get the fees that they would have got before and collected; and if we are to pay out of the county treasury a large amount of other fees besides those which are established by law, it will certainly be a very unpopular move and not a move in the right direction. A district attorney, if he does not get any business, has no trouble, and he should be paid no more than the fees that are attached to his office. For this reason, I trust this section will be left remain as it was reported by the committee of the whole.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Chester.

The amendment was rejected.

Mr. CORSON. I should like to have the section read as it stands amended.

The CLERK read as follows:

"All county officers shall be paid by salary to be prescribed by law; and all fees attached to any county office shall be received by the proper officer for and on account of the State or county, as may be directed by law. The annual salary of any such officer and his clerks shall not exceed the aggregate yearly amount of fees collected by him."

Mr. BUCKALEW. I move to strike out all after the word "law" in the fourth line.

Mr. CLARK. I cannot see my way clear to vote for striking out this proviso. The proposition which the section seems to establish is that all our county officers shall be paid by a salary, which is intended to avoid the many mischiefs we have suffered by reason of charging fees, and either the county or the State may pay the salaries, as may be provided by law. The effect of this will be that the officers receiving the fees will make no effort to collect them. Everybody knows that. They now collect their fees with great care, not only during the time of their services but after their terms expire, because the fees belong to them. But if you provide that they shall be paid by salary, all the inducement to collect their fees is gone, and the consequence will be that annually many thousands of dollars will stand uncollected upon the records of the courts, because there is nobody who will have any special incentive to collect them. The provision which we are now asked to strike out is our only protection against this difficulty. That proviso is, "*provided however*, That the annual salary of any such officer shall not exceed the aggregate yearly amount of fees collected by him." Hence the same inducement to collect these fees will exist under this as existed before. I think it all important that this proviso should be continued in this section, and that the officers will be interested upon their own account for the collection of these fees.

Mr. H. G. SMITH. Mr. President: This section is unquestionably designed to meet a want which is felt and acknowledged throughout this State. When the Legislature comes, under the provisions of this section if it be adopted, to provide the means of carrying it into effect, I apprehend they will be forced to adopt a

system of stamps by means of which any fee authorized to be paid into any office shall be paid. In no other way that I can conceive of, in no other way that I have ever heard suggested, can this reform, which is unquestionably shown to be needed in some portions of the State, be carried out. In that way I believe it can be carried out properly, and the fees be properly collected, so that there will be no impositions put upon persons who have business with the public offices, and so that the salaries meted out to these officers will be paid to them exactly in proportion ascertained and determined by the Legislature. I think the proviso ought to stand as it is.

The Legislature will have to provide for some general and equitable mode of arranging the details of this fee system and of providing for the salaries of the county officers. I think the proviso should be retained, because it fixes a limit upon these salaries. Even in the smaller counties of the Commonwealth officers are found ready and willing to accept office for the amount of the fees now received, and if the Legislature names a fixed salary in the place of fees, competent and reliable men will accept office just as readily for salary as they now do under the fee system. But some limit should be placed upon the Legislature which will prevent it from increasing the salaries of the officers of these small counties beyond what is right and proper. If we do not make some such provision, every Representative in the Legislature from every county in the Commonwealth, large or small, will have the whole gang of county officers urging him to vote for the largest salary. There ought to be some restriction in this respect upon the power of the Legislature. The proviso will operate as a restriction and, therefore, I hope it will remain.

The PRESIDENT *pro tem*. The question is upon the amendment of the gentleman from Columbia (Mr. Buckalew.)

On the question of agreeing to the amendment, a division was called for, which resulted thirteen in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs upon the section.

Mr. KAINE. Upon that I call for the yeas and nays.

Mr. REYNOLDS. I second that call.

Mr. BUCKALEW. I would appeal to my friend from Fayette not at this time

to call for the yeas and nays. He can accomplish all he desires by calling for a division, and I hope we shall not waste the closing hours of this day's session in calling the yeas and nays.

Mr. KAINE. I would be very glad to accommodate my friend from Columbia, but I desire to place myself on record against this section.

Mr. J. M. BAILEY. I ask for a division of this section, to end at the word "law."

Mr. ANDREW REED. I rise to a point of order. The same effect that would be produced by a division has already been had by voting down the amendment of the gentleman from Columbia, and therefore the division is not in order.

The PRESIDENT *pro tem*. The Chair will state that the section is not divisible, because if the first division were voted down, there would be nothing left of the section. The vote must be taken upon it as a whole, and upon that question the yeas and nays have been ordered. The section will be read for information, and then the Clerk will proceed with the call.

The CLERK read as follows:

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

The yeas and nays which had been required by Mr. Kaine and Mr. Reynolds, were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Bear, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Bowman, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Clark, Corson, Cronmiller, Curry, Darlington, De France, Dodd, Elliott, Ellis, Ewing, Fell, Finney, Fulton, Guthrie, Hall, Hanna, Hazzard, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Landis, Lilly, MacConnell, M'Clellan, M'Murray, Mann, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Smith,

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Henry W., Struthers, Turrell, Wetherill, John Price, Wherry, Woodward and Worrell—69.

NAYS.

Messrs. Black, Charles A., Kaine, Minor, Mott, Porter, Purman, Simpson, Walker, White, Harry, White, J. W. F. and Wright—11.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Boyd, Brodhead, Broomall, Carey, Cassidy, Cochran, Collins, Corbett, Craig, Curtin, Cuyler, Dallas, Davis, Dunning, Edwards, Funck, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Mitchell, Parsons, Pughe, Ross, Runk, Sharpe, Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, Wetherill, J. M., White, David N. and Meredith, *President*.—53.

The PRESIDENT *pro tem*. The fourth section will be read.

The CLERK read as follows:

SECTION 4. 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.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 5. 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. S. A. PURVIANCE. Upon fuller reflection I am of opinion that this section is unnecessary, and therefore ask that it be voted down.

The section was rejected.

The CLERK read the next section as follows:

SECTION 6. Three county commissioners and three county auditors shall be elected in each county, and shall serve for three years. In the election of said officers each qualified elector shall vote for only two persons, and the three persons having the highest number of votes shall be elected. Casual vacancies in the offices of county commissioner and county auditors shall be filled by the courts of common pleas of the respective counties in which such vacancies shall occur.

cur 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. J. N. PURVIANCE. I move to strike out all after the word "years," in the second line, and insert "one of whom shall be elected every year." This gets rid of the provision for the limited vote.

Mr. BUCKALEW. I desire simply to remark that I have several amendments to propose to the section, and of course I want this proposition voted down.

Mr. S. A. PURVIANCE. Before the vote is taken I wish to say one thing, that this section is no part of the report of the Committee on County, Township and Borough Officers; it was put in by the committee of the whole; and therefore it cannot be claimed to belong to our report. I am opposed to the section and shall record my vote against it.

Mr. DARLINGTON. I hope this amendment will prevail. It will make the section in harmony then with the rest of our system. We are all aware that the provision which now exists has existed for the last seventy years, by which each year a new officer comes in and one goes out, thus preserving the intelligence and information which are gained by two years service. It is a very valuable provision and has been found to work well, and I trust will not be changed. Especially ought we not to introduce this limited system of voting in regard to county officers, since it has been rejected here most emphatically as regards the Senate and the House of Representatives, and I trust not soon to be revived. I hope a square vote will be taken upon it.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Butler (Mr. J. N. Purviance.)

Mr. J. N. PURVIANCE. I call for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call.

The amendment was read.

Mr. LILLY. This is a test question on this restrictive mode of voting, and I hope members will understand it. ["We understand it."]

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Andrews, Baily, (Perry,) Bowman, Calvin, Darlington, Ewing, Fell, Hanna, Hazzard, Horton, Knight, Lawrence, MacConnell, McClean, Minor, New-

lin, Niles, Patterson, D. W., Porter, Purviance, John N., Purviance, Samuel A., Reynolds, Russell, Simpson, Smith, H. W., Stanton, Struthers, Turrell, Walker, Wetherill, Jno. Price, White, Harry and White, J. W. F.—32.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Black, C. A., Brown, Buckalew, Bullitt, Campbell, Carter, Church, Clark, Corson, Cronmiller, Curry, Curtin, De France, Dodd, Elliott, Ellis, Finney, Fulton, Guthrie, Hall, Hemphill, Howard, Hunsicker, Kaine, Lamberton, Landis, Lilly, M'Murray, Mann Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Read, John R., Reed, Andrew, Smith, H. G., Wherry, Woodward, Worrell and Wright—51.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Boyd, Brodhead, Broomall, Carey, Cassidy, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Davis, Dunning, Edwards, Funck, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Parsons, Pughe, Rooke, Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., White, David N. and Meredith, *President*—50.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. BUCKALEW. I move a verbal amendment, to strike out the words "and shall serve for three years," in the second line. That is already provided for in section two. I desire to further amend in that line by inserting after the word "county" the words "where such officers are chosen, in the year 1875 and every third year thereafter."

Mr. EWING. Let the section be read as it would stand.

The CLERK. The section will then read: "Three county commissioners and three county auditors shall be elected in each county where such officers are chosen, in the year 1875 and every third year thereafter. In the election of said officers," &c.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia (Mr. Buckalew.)

The amendment was agreed to.

Mr. BUCKALEW. I move further to amend, by striking out the word "only," in the third line, and inserting "no more than."

The amendment was agreed to.

Mr. BUCKALEW. I move further to amend the sentence beginning with "casual vacancies," in the fifth line, so as to make it read: "Any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which such vacancy occurs." These are merely verbal alterations.

The amendment was agreed to.

Mr. NILES. I do not rise to make a speech, for I suppose we all have our minds made up on this subject. I simply desire to call for the yeas and nays on the adoption of the section.

Mr. STANTON. I second the call.

Mr. HANNA. Will the gentleman withdraw the call for a moment?

Mr. NILES. Certainly.

Mr. HANNA. I move further to amend by striking out the word "casual" in the fifth line.

Mr. BUCKALEW. That is a distinction from regular vacancies by expiration of term. It is used in several other articles of the Constitution.

Mr. HANNA. I withdraw the amendment.

Mr. NILES. I renew the call for the yeas and nays.

Mr. J. M. BAILEY. I move further to amend by adding after the word "auditors," in the first line, the words, "and three directors of the poor," and also by inserting after the word "auditors," in the sixth line, "and directors of the poor."

Mr. HUNSICKER. I hope that will not be done.

Mr. J. M. BAILEY. We have in our part of the State directors of the poor, and I insist on the amendment because there is not a bit more reason why this section should apply to county commissioners and auditors than that it should apply to directors of the poor, and I do not wish to have myself on the record as voting to apply it to these two offices and not to the other.

The PRESIDENT *pro tem*. The question is on the amendment offered by the delegate from Huntingdon.

Mr. NILES. There is no such office provided for in the first section of this article, and consequently if we adopt this amendment we shall be providing for the

election of an officer who is not provided for in the article.

Mr. J. M. BAILEY. One of the amendments moved by the gentleman from Columbia will include directors of the poor. Three county commissioners, three county auditors, and three directors of the poor in each county where such officers are chosen. That will include directors of the poor, I am sure.

Mr. J. PRICE WETHERILL. We have in the city of Philadelphia some thirteen guardians of the poor, and I should like to know how that will apply to the city of Philadelphia. I trust the amendment will be voted down.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. NILES. 'I renew the call for the yeas and nays.

Mr. STANTON and Mr. HUNSICKER. I second the call.

Mr. EWING. I desire to state that I am paired on this question with Governor Bigler. He would have voted "yea" and I should have voted "nay."

The question being taken by yeas and nays, resulted, yeas forty-eight, nays twenty-eight, as follows:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Biddle, Black, Charles A., Brown, Buckalew, Bullitt, Campbell, Carey, Carter, Church, Clark, Corson, Cronmiller, Curtin, De France, Dodd, Elliott, Ellis, Finney, Fulton, Guthrie, Hall, Hemphill, Hunsicker, Kaine, Lamberton, Landis, Lilly, Mann, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patton, Purman, Read, John R., Reed, Andrew, Smith, H. G., Turrell, Wherry, Woodward, Worrell and Wright—48.

NAYS.

Messrs. Baily, (Perry,) Bowman, Calvin, Curry, Darlington, Fell, Hanna, Hazzard, Horton, Knight, Lawrence, MacConnell, McClean, Minor, Niles, Patterson, D. W., Porter, Purviance, Samuel A., Reynolds, Rooke, Russell, Simpson, Smith, Henry W., Stanton, Struthers, Walker, Wetherill, Jno. Price, and White Harry—28.

So the section was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S. Boyd, Brodhead, Broomall, Cassidy

Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Davis, Dunning, Edwards, Ewing, Funk, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Howard, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, T. H. B., Pughe, Purviance, John N., Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., White, David N., White, J. W. F. and Meredith, *President*—57.

The eighth section was read as follows:

SECTION 8. The terms of office of all county officers shall begin on the first Monday of December next after their election.

Mr. S. A. PURVIANCE. In view of the fact that we have changed the general election from October to November, I move that "December" be stricken out and "January" inserted.

The amendment was agreed to.

The section as amended was agreed to.

The *PRESIDENT pro tem.* The article is gone through with.

Mr. S. A. PURVIANCE. I move that it be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

LEAVES OF ABSENCE.

Mr. ALRICKS. Mr. President: I ask leave to make a motion at this time. ["No." "No." "Yes." "Yes."]

The *PRESIDENT pro tem.* Shall the delegate have leave to make a motion.

Mr. J. PRICE WETHERILL. I hope the delegate will state it for the information of the Convention before he has leave.

Mr. ALRICKS. Mr. J. M. Wetherill stated this morning that he was not well, and he asked to be excused for to-morrow. The Chair said he was too late. I hope gentlemen do not suspect me of desiring to make an improper motion.

Leave was granted to make the motion; and leave of absence was obtained for Mr. J. M. Wetherill.

Mr. H. W. PALMER. I ask for leave of absence for Mr. Dunning on account of sickness in his family, for a few days from to-day.

Leave was granted.

Mr. HUNSICKER. I move that the Convention do now adjourn to meet on Monday morning, at 10 o'clock.

Mr. ALRICKS. I move to amend that by saying "to meet at Harrisburg."

The amendment was not agreed to.

The *PRESIDENT pro tem.* It is moved that the house adjourn until Monday, at 10 o'clock.

Mr. RUSSELL. I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The *PRESIDENT pro tem.* The Clerk will call the names of members on the motion.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Armstrong, Black, Charles A., Buckalew, Bullitt, Calvin, Clark, Corson, Curry, Curtin, Ellis, Ewing, Guthrie, Hanna, Howard, Hunsicker, Kaine, Lamberton, Landis, Lilly, Mann, Read, John R., Simpson, Smith, Henry W., Stanton, Walker, White, Harry and Worrell—27.

NAYS.

Messrs. Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Bowman, Brown, Campbell, Carey, Carter, Church, Cronmiller, De France, Dodd, Elliott, Fell, Finney, Fulton, Hall, Hazzard, Horton, Knight, Lawrence, MacConnell, M'Clean, Mitchell, Mott, Niles, Palmer G. W., Palmer, H. W., Patterson, D. W., Porter, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Struthers, Turrell, Wetherill, J. Price, Wherry and Wright—44.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Cassidy, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Darlington, Davis, Dunning, Edwards, Funk, Gibson, Gilpin, Green, Harvey, Hay, Hemphill, Heverin, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Parsons, Patterson, T. H. B., Patton, Pughe, Purviance, John N., Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., White, David N., White, J. W. F., Woodward and Meredith, *President*—62.

Mr. WRIGHT. I move that we adjourn.

Mr. CORSON. Before that is put, I ask leave of absence for to-morrow.

Leave was granted.

The *PRESIDENT pro tem.* It is moved that the Convention do now adjourn.

SEVERAL DELEGATES addressed the a division, ayes, thirty-nine; noes, thirty-two.
Chair.

Mr. LAWRENCE. I insist upon the So the motion was agreed to, and (at six o'clock and forty minutes P. M.) the question being put. Convention adjourned until to-morrow

The question being put, there were on morning at nine o'clock.

ONE HUNDRED AND THIRTIETH DAY.

SATURDAY, June 28, 1873.

The Convention met at 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. ANDREWS asked and obtained leave of absence for Mr. M'Murray for a few days from to-day.

Mr. KAINE asked and obtained leave of absence for Mr. Clark for a few days, including to-day.

Mr. J. PRICE WETHERILL asked and obtained leave of absence for Mr. Cuyler for a few days from to-day.

Mr. J. M. BAILEY asked and obtained leave of absence for Mr. Gilpin for a few days from to-day.

Mr. LILLY asked and obtained leave of absence for Mr. Broomall for to-day.

Mr. ELLIS asked and obtained leave of absence for himself for Monday next.

Mr. SIMPSON. I ask leave of absence for my colleague (Mr. Baker) from Tuesday last, on account of severe sickness.

Leave was granted.

Mr. EWING asked and obtained leave of absence for Mr. T. H. B. Patterson for to-day.

Mr. KAINE. I ask leave of absence for the remainder of the Convention from one o'clock this afternoon until ten o'clock on Monday morning. [Laughter.]

The PRESIDENT *pro tem.* That motion is not in order.

TO-DAY'S ADJOURNMENT.

Mr. WRIGHT. I offer the following resolution:

Resolved, That at the hour of one o'clock the Convention adjourn until Monday next, at ten o'clock A. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted ayes forty-three, noes not counted.

The resolution was read the second time and considered.

Mr. LILLY. I ask the gentleman to alter that to half-past twelve o'clock, which will give delegates more time to get to the depots.

Mr. NEWLIN. Mr. President: I offer the following amendment: Strike out all after the word "resolved" and insert:

"That when the Convention adjourn to-day, it be to meet at twelve o'clock M. on the third Tuesday of October."

The amendment was rejected.

The PRESIDENT *pro tem.* The question is on the resolution.

The question being put, there were on a division ayes forty-three.

Mr. RUSSELL. I call for the yeas and nays.

Mr. NEWLIN. I second the call.

The PRESIDENT *pro tem.* The Clerk will call the names.

The yeas and nays having been required by Mr. Russell and Mr. Newlin weretaken and were as follow, viz:

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Black, J. S., Bowman, Boyd, Brown, Bullitt, Cassidy, Church, Curry, Curtin, Darlington, Dodd, Elliott, Ellis, Ewing, Fell, Hanna, Heverin, Kaine, Knight, Lilly, Littleton, M'Clellan, Minor, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Read, John R., Rooke, Simpson, Stanton, Struthers, Temple, Turrell, Walker, Wetherill, Jno. Price, Woodward and Wright—47.

N A Y S .

Messrs. Ainey, Andrews, Baer, Calvin, Campbell, Carey, Carter, Cronmiller, Dallas, De France, Fulton, Guthrie, Hall, Hazzard, Hemphill, Horton, Lawrence, MacConnell, Newlin, Purman, Purviance, Samuel A., Reynolds, Russell and Wherry—24.

So the resolution was agreed to.

ABSENT—Messrs. Addicks, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Brodhead, Broomall,

Buckalew, Clark, Cochran, Collins, Corbett, Corson, Craig, Cuyler, Davis, Dunning, Edwards, Finney, Funck, Gibson, Gilpin, Green, Harvey, Hay, Howard, Hunsicker, Lamberton, Landis, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mann, Mantor, Metzger, Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Purviance, John N., Reed, Andrew, Ross, Runk, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Van Reed, Wetherill, J. M., White, David N., White, Harry White, J. W. F., Worrell and Meredith, *President*—62.

REVENUE AND TAXATION.

Mr. BULLITT. I ask for the reconsideration of the vote on sections eleven and twelve of the article on revenue, taxation and finance. I voted in the affirmative on that question.

The *PRESIDENT pro tem.* The article has been referred to the Committee on Revision and Adjustment. Before it can be brought back to the House, the vote by which it was referred to that committee must be reconsidered.

Mr. DARLINGTON. I move to reconsider that vote.

Mr. KATNE. I second the motion.

Mr. NILES. One word. The chairman of the Committee on Revenue, Taxation and Finance is not here to-day. He will be back on Monday.

Mr. CURTIN. It will lie over after the reconsideration.

Mr. NILES. Very Well.

The *PRESIDENT pro tem.* A motion to reconsider the reference is made and seconded.

The motion to reconsider was agreed to, there being on a division ayes thirty-four, noes eighteen.

The *PRESIDENT pro tem.* The delegate from Philadelphia (Mr. Bullitt) now moves to reconsider the vote on the eleventh and twelfth sections of this article.

Mr. SIMPSON. I move to postpone the further consideration of that motion.

The motion to postpone was agreed to.

CITIES AND CITY CHARTERS.

Mr. HANNA. I move to proceed to the consideration of the article on cities and city charters.

The motion was agreed to, and the Convention proceeded to the consideration on second reading of the article (number six) on cities and city charters.

The first section was read as follows:

"The Legislature shall pass general laws whereby a city may be established

whenever a majority of the electors of any town or borough voting at any general election shall vote in favor of the same being established."

Mr. KATNE. I should like to know whether this article has passed committee of the whole and is on file.

SEVERAL DELEGATES. It is not on our files.

Mr. STANTON. As reported from the committee of the whole this article is not on any of our files, and the Sergeant-at-Arms says he has none.

The CLERK. If the Convention will permit me to state, I will explain the matter to them. The article never passed committee of the whole, and it is on the files as originally reported.

Mr. WHERRY. I move, then, that the Convention go into committee of the whole on the article.

The CLERK. The committee of the whole was discharged in regular order and all amendments fell.

Mr. WHERRY. Very well.

The *PRESIDENT pro tem.* The first section of the article is before the Convention.

Mr. DODD. I am opposed to this section. Section nine of the article on legislation provides that no city shall be incorporated except by general law; so that part of the section is already provided for. That portion of this section which provides that a city shall be established whenever a majority of the electors of any town or borough shall vote in favor of the same is wrong. My reason is that, if this is adopted, there will be scarcely a borough or town of a few thousand inhabitants, but which will immediately obtain a city charter. I know something about this by experience. Nearly all the towns of four or five thousand inhabitants in the northeastern portion of the State have already obtained city charters. My town obtained one when it had a population of about four thousand. It was simply to obtain the dignity and title of a city that the charter was applied for. We find it cumbersome, useless and expensive. We were much better as a borough. If every town, no matter what its population may be, can obtain a city charter as will be the case if we adopt this section, every little town in the oil region, because they are all ambitious, will vote for a city charter. They are all called cities now. We have in our county Allamagoozlam city, Red-Hot city, Stand-Off city, Pithole city, Paradise Lost city,

Driftwood city, Shacknasty city, and many others which by any name would not smell sweet. They are cities in name, but they will soon become cities in reality if this passes. They all start up in a day and they fall in about a week. [Laughter.]

There is but one of the provisions of this article that would apply to them with any force, and that is the sixth section in relation to a sinking fund. They all have sinking funds, and sink them about twelve hundred feet in the ground, and then the city sinks, too. [Laughter.] It is unnecessary to pass this section. It is simply useless. There is no corruption in the Legislature in relation to the charter of cities. Towns that have the requisite population have no difficulty in obtaining a city charter. But if you pass this unnecessary article, the evil that I speak of will be inevitable. Hundreds of the unimportant towns of the State will obtain city charters, and will have an honorable mayor and an honorable council under salary.

MR. S. A. PURVIANCE. I move to amend, by inserting after the word "borough," in the third line, the words "having a population of ten thousand."

MR. LITTLETON. I would suggest to the gentleman to say "at least ten thousand."

MR. S. A. PURVIANCE. Very well.

The amendment was agreed to.

MR. DARLINGTON. I do not know that I have any business to say much about cities; I am willing to leave that subject to city gentlemen; but I will say that this article nowhere provides any mode of establishing cities at all, except that they may grow up into small towns and then become cities.

MR. LITTLETON. That is all provided for by general law.

MR. DARLINGTON. It may be so. It however, suppose that every city that desires to be erected into a city, in the first place must have a special law under which it can be incorporated.

MR. C. A. BLACK. Oh, no.

MR. DARLINGTON. How, then?

MR. C. A. BLACK. Why, the first section provides for that.

MR. DARLINGTON. I do not think so.

The first section says:

"The Legislature shall pass general laws whereby a city may be established, whenever a majority of the electors of any town or borough voting at any gen-

eral election shall vote in favor of the same being established."

Here is a town, for instance, without limits and without boundaries. If a vote is to there take place, who is to decide who shall vote on the question whether or not it is to become a city? How much of the surrounding country is to be included in the parts voting upon the question of establishing a city? You will necessarily have to allow the Legislature to incorporate cities when the people want them. There is no sort of corruption in this thing. The Legislature never incorporates cities unless the people want them and ask for them. Why not let the whole subject go to the Legislature, and give that body full scope to incorporate cities whenever the people desire it done. Let the Legislature judge of this subject. It is a question that is eminently proper for their determination.

The section as amended was agreed to, ayes thirty-four, noes not counted.

The PRESIDENT *pro tem*. The second section will be read.

The CLERK read as follows:

SECTION 2. Every city now existing or hereafter established shall be governed by a mayor and a select and common council, in whom the legislative power shall be vested.

MR. H. W. PALMER. There are two objections to this section in its present shape which are to me important. The first is that it will disturb the internal economy of the cities that are already in existence, because many cities have but one council and do not desire two. They get along very well with a single branch, and do not desire to have a select council; but if the section passes as it is, it will interfere with those cities, and will require a change in their city government. That is one objection.

The next objection is that it vests in the mayor and in the councils legislative power. I would like to know what that means. "Legislative power" is a pretty broad term, and until some one can define it and make me understand what legislative power is, I shall hesitate to vote to give the councils of any city any legislative power. The municipal governments in the cities are generally controlled by gangs of very corrupt scoundrels, and if they have legislative power they may take advantage of it to legislate my money out of my pocket into their own, and I do not like it.

Mr. LITTLETON. I suppose "legislative power, here, simply means the municipal legislative power, such power as may be given to municipalities. They certainly can only exercise that power and no other, because power can only be exercised where power is conferred.

Mr. ALRICKS. I do not desire to propose an amendment, but I would suggest that the word "select" be stricken out so as to leave it a single council.

Mr. BIDDLE. There is a great deal of force in the objection made to the section, as it stands, by the gentleman from Luzerne, (Mr. H. W. Palmer,) and the section I think should be amended. If you strike out the words "select and common" and add an "s" to council, I think it will cover that branch of the case, and leave it so that small cities who at present have but one branch and do not desire two can retain their government as it is.

In regard to legislative power, I do not think that is the best phrase to be used, although there is no difficulty in understanding it. Of course, the legislation in municipalities must relate only to those municipalities and must be subordinate to the State and Federal governments and to the laws of the Commonwealth. Still, I think these words can be placed in a shape which will obviate all objection, and instead of the words "legislative power shall be vested," I would suggest the use of the phrase, "in whom shall be vested the power of passing ordinances."

I would therefore move these two amendments: First, to strike out the words "a select and common," and to make the word "council" read "councils;" and to strike out the words "the legislative power" and add after the word "vested" the words "the power of passing ordinances."

The PRESIDENT *pro tem*. The Clerk will read the section as it would read if amended as proposed.

The CLERK read as follows:

"Every city now existing, or hereafter established, shall be governed by a mayor and councils, in whom shall be vested the power of passing ordinances."

Mr. LITTLETON. I think the last amendment is still more objectionable than the phrase as it stands in the report of the committee, and the section would be improved by striking out the words "in whom legislative power shall be vested" altogether, without adding any amendments. Certainly the municipality can exercise the power given to it, and the

body of the municipality, which is the governing power, must exercise that power, because nobody else can, and therefore my suggestion seems to be wiser than the amendment of my colleague. Councils do other acts besides passing ordinances; they pass resolutions and other matters of that sort, which will not be technically included in the term "ordinances." Then, if you make the correction suggested by my colleague, it should be so done as to effect the purpose desired by him, which his amendment will hardly do. He uses the word "councils," which, being plural, of course requires two bodies. He should have said, "which shall be governed by a mayor and council or councils."

Mr. MACCONNELL. I rise to suggest whether the phraseology as proposed to be adopted in the section would not vest legislative power in the mayor as well as city councils. It says:

"Every city now existing or hereafter established shall be governed by a mayor and councils, in whom the legislative power shall be vested."

Does not that put the mayor on an equality with the councils as part of the legislative power? I would suggest a change in that respect by changing the phraseology and saying "in which councils the legislative power shall be vested." I make that suggestion to the gentleman from Philadelphia (Mr. Biddle.)

Mr. BIDDLE. I do not think if my friend from Allegheny would read the next section that he would insist upon that objection, because we have likened throughout this section the mayor to the chief executive of the State and of the federal government by giving him a qualified veto. No ordinance, any more than any bill, will become a law unless signed by the mayor, with the qualification that if he returns it with objections, it may be passed over his head in the usual way. I think it better to leave it in that form.

What is desirable in these articles is to have brevity, and by saying "which shall be governed by a mayor and councils, in whom shall be vested the power of passing ordinances," we simply use the appropriate language by which, so far as I know, all the municipal laws of a city are passed. They are passed by councils, one or two branches, signed by the mayor, or if he does not approve he returns them and they are passed over his veto.

Mr. ARMSTRONG. It appears to me that the first, second, and third sections are all

useless, and this article would be much better without them. It is to be observed that in our article on legislation we have provided that "the Legislature shall not pass any local or special law incorporating cities, towns or villages, or changing their charters;" or "for erecting townships or boroughs, or changing township lines or borough lines;" "nor creating offices, nor prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts." Now, it seems to me that it is not well that we should fix in the hard lines of the Constitution, which cannot be changed, a series of enactments which may be in practice found to work very inconveniently.

The general laws which the Legislature must pass in respect to cities, counties and townships will require that they shall consider this question very maturely and deliberately, and we ought not to fasten them down to anything which touches the internal regulations of a city. I know that a city charter adds largely to the expenses of a corporation. Designing men very frequently for the pride of a city name ask the people of a borough to get themselves incorporated into a city, and in a very short time they are very tired and desire to get back into their former condition of a borough. Now, I do not think it is well that we should pass either of these sections. They are useless; they accomplish no wise purpose; and we shall do better to leave the subject to the general discretion of the Legislature, where these things can be moulded as exigencies may arise. That which may be well for this year or next year, may not be wise for ten years hence.

As it respects the select and common councils, I know that in the city of Williamsport when it was first organized it was provided that we should have a select and common council; but in that small city it was found to be so cumbersome and inconvenient to have two bodies that by the universal desire of the citizens the Legislature were requested to alter and did alter our city charter in that regard, and now we have but a single council; and in small cities that is better. I think it ought not to be provided as it is here that there shall necessarily be both a select and common council, and I submit to the Convention that it would be wise to vote all these three sections down and leave this matter open to the discretion of

the Legislature as the exigency may arise.

Mr. DALLAS. Mr. President: I desire to say but a few words, in concurrence with the gentleman from Lycoming. Heretofore our cities have been always incorporated by act of the Legislature, and the act of incorporation has been the charter to the city and the constitution to which its ordinances have been subordinate. There has been no complaint on that subject except such as will be remedied by the general provision we have made in restriction of legislative power in this regard. We have provided that the Legislature shall pass no special laws making or altering the charters of cities, and therefore I think with that restriction upon the Legislature it is safer to leave this whole subject in their hands. Should, however, the Convention think otherwise and deem it necessary to pass any section on this subject, then I think the suggestions made by the delegate from Philadelphia who sits behind me (Mr. Biddle) have not been sufficiently considered.

In the first place, he suggests that we strike out "select and common council" and insert in lieu of those words the word "councils"—in the plural. That may be liable to misconception in construction, because the Supreme Court have decided more than once in construing laws that where you use the plural you must have more than one to meet the expressed intention of the Legislature, as in a case where sureties are required upon official bonds, the courts have decided that there must be more than one to meet the plural expression. Now, if you strike out "select and common council" here, you do not have the intention of the gentleman from Philadelphia sufficiently expressed to avoid all difficulty, for he still substitutes the plural "councils," and the word "councils" refers not to the members who compose the body, but to the aggregate body itself, and to meet the requirement of the plural you would still have to have two councils, or, at all events, there would be a doubt on that subject, which in a constitutional provision we should avoid.

Therefore, in furtherance of what the able president of the Select Council of Philadelphia (Mr. Littleton) has said upon this floor, I suggest with him that we should have "a council or councils," so as to leave it to the citizens, if this section should be adopted, to determine

whether they will have one or two councils.

The objection to the suggestion of the gentleman from Philadelphia as to the latter part of the section is equally potent in my mind. He proposes to strike out the phrase, "in whom the legislative power shall be vested," as it refers to councils, and to substitute for that "in whom the power to pass ordinances shall be vested." I submit that the beneficial power of councils is not now restricted to the passing of ordinances, and legislative power in the city has not been restricted to the passage of ordinances. In this city the councils constantly pass resolutions and make recommendations. They, as was said the other day, audit accounts through their committees. They hear citizens upon different subjects, and investigate abuses. If you, by constitutional provision, restrict them to the passage of ordinances, you limit them and restrict them in their power far beyond any limitation or restriction that properly should be put upon them.

Therefore, my conclusion is, first, that this section is unnecessary, but that if it should be passed, then instead of saying that the city shall be governed by a mayor and councils it should be "by a mayor and council or councils," and that we should retain the words "in whom the legislative power shall be vested," or strike them out entirely; either will answer the purpose, because in saying that the city shall be governed by its mayor and councils, we include everything.

Mr. BOWMAN. Mr. President: When this report under consideration was originally presented, of course it could not be anticipated by the Committee on Cities and City Charters what action might be taken by the Committee on Legislation. The report of the Committee on Legislation seems to supersede the necessity of the passage of these two sections. For instance, your own city, Mr. President, the city of Erie, is governed at the present time, I believe, by a select and common council. Then the little city where I reside is governed by a common council alone. When it received its original charter in 1866, there was a select and common council provided for the government of the city. In 1870 that was repealed; and as the gentleman from Lycoming stated as to his city, a new charter was obtained, or an amended charter, providing simply for a common council.

Then, here would be the difficulty right in our own county, Mr. President. If this is passed, as it is, of course the change must necessarily change the organization of the city of Corry. If the gentleman's amendment prevails, it will change the present organization of the city of Erie. That we do not want done. The city of Erie is now governed by both a common and select council. We wish to leave it there. Let the people determine that question for themselves through the Legislature.

Hence, I must come to the conclusion that the suggestions of the gentleman from Lycoming are correct, for the reason that this whole matter has been provided for by another committee whose report has already passed the committee of the whole, and I believe also on second reading.

Mr. S. A. PURVIANCE. Mr. President: It occurs to me that the second and third sections may be very well dispensed with, but the first section ought not to be dispensed with. The first section declares that the Legislature may pass general laws whereby a city may be established. Now, is not that sufficient, because in the passage of that general law they will make provision for whatever power is necessary to be conferred upon the mayor and the councils. If, however, it is thought best to retain the second section, then I would make this suggestion as probably a better one than that made by the gentleman from Philadelphia, (Mr. Biddle,) because I do not like—

Mr. BIDDLE. The gentleman will allow me to say that I withdraw my amendment. I think it is better to vote both sections out entirely.

Mr. S. A. PURVIANCE. Very well.

The PRESIDENT *pro tem*. The question is on the second section.

Mr. ALRICKS. I would renew the amendment in this way: Strike out the words, "select and common," and insert "council or councils," and before the word "legislative," in the third line, insert the word "municipal," so as to read:

"Every city now existing or hereafter to be established shall be governed by a mayor and council or councils, in whom the municipal legislative power shall be vested."

I apprehend that all these sections are right in their place. We have a provision in the article on legislation restricting the power of the Legislature, it is true, but we have no provision for the creation of

a city. I know that a great many cities have been incorporated where the citizens have been injured by the incorporation; but still there must be a power somewhere to incorporate cities.

Mr. HANNA. Will the gentleman from Dauphin allow me to call his attention to the report of the Committee on Legislation?

Mr. ALRICKS. Certainly.

Mr. HANNA. It contains a provision that "the Legislature shall not pass any local or special law incorporating cities, towns or boroughs."

Mr. ALRICKS. Precisely; they shall pass no local law to incorporate cities; but they ought to pass a general law under which cities can be incorporated, and that is all that this section provides for. Now in some of the States, particularly in the east, there is a provision that the courts may incorporate cities; but in our State, our cities have generally been incorporated by special law. But why should there not be a general law under which cities may be incorporated and a provision in it, as we have now in some of our laws, that by a vote of the people that act of incorporation may be annulled and the people may return to their original condition as a borough? I think our work will be incomplete unless we give to the Legislature the power of making a general law to incorporate a city, and when they do so, we ought, and I believe do, agree in the opinion that the municipal legislative power of the city should be vested in the mayor and the councils. I presume that would be perfectly right. Therefore I trust these sections, which have been well matured by the Committee on Cities and City Charters, and have passed the committee of the whole, will be adopted. These three sections did pass the committee of the whole, I say.

Mr. DEFRANCE. Oh, no!

Mr. GUTHRIE. I hope the amendment of the gentleman from Dauphin will be accepted and will prevail. I think some organic act is necessary on this subject, and if the amendment prevails, I can see no objection to the section with that amendment, and I am, therefore, disposed to vote for the amendment and for the section.

Mr. AINEY. I do not agree with gentlemen that this section is wholly unnecessary. By general law the Legislature can vest in a board of aldermen or "metropolitan police commission," or some

other body, the government of a city. I think a section which will assert the principle that the municipality shall be governed by a mayor and councils, is correct, and it ought to be inserted in the organic law. I desire to offer an amendment to the amendment, which will cover all the points suggested by the gentleman from Dauphin. My amendment is to make the section read:

"All cities shall be governed by a mayor and council, or councils, who shall have power to enact municipal legislation by ordinance."

At the suggestion of the gentleman from Philadelphia in front of me, (Mr. Littleton,) I will add after ordinance the words "or resolution."

The PRESIDENT *pro tem*. It will be so modified. The amendment to the amendment is before the Convention.

Mr. AINEY. Mr. President: I have had some little experience in municipal legislation and local government; and while I agree with the remarks that fell from the gentleman from Luzerne (Mr. H. W. Palmer) that city councils are too frequently composed of bad men, yet I think as a rule it would be safer to vest the governing power and the local municipal legislative power in the hands of councils and the mayor, than in any other body. If that be the opinion of this Convention, it seems to me proper that we assert it in the fundamental law. A provision that cities shall be governed by, and that the municipal legislative power shall be vested in, the mayor and councils, does not seem to me out of place here.

Mr. HANNA. Mr. President: The difference of opinion upon this question satisfies my mind that the section should not be in the Constitution at all. It is no place for any such provision. We have none at present. The power is safely vested in the Legislature, and the article on legislation as reported and passed on second reading covers the whole subject.

Now, we propose in this article to say that the Legislature shall pass general laws incorporating cities. If they pass an act giving the people the power to incorporate themselves by a vote, that is sufficient. Then the Legislature will also pass a general law giving certain general powers to the different cities of the Commonwealth. I think that is sufficient. That very act of Assembly will provide how the city shall be governed, whether the mayor shall have a veto or not; but why should we descend into such details

in the Constitution? I do not see the necessity of it; and, as has been well remarked by the gentleman from Lycoming, (Mr. Armstrong,) the first four sections of this report have already been anticipated.

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

Mr. HANNA. Certainly.

Mr. AINEY. Suppose the Legislature should pass a general law vesting in a board of aldermen all the municipal legislative power in cities of a given population, how might that affect the city of Philadelphia? In other words, in a case where one political party had control in the Legislature, and another in the city government, might not the Legislature vest the legislative power of the city in the hands of a board of aldermen, and put the government substantially in the hands of a police commission, and thus change the political character of the local government? And has not this been attempted in Philadelphia and other cities?

Mr. HANNA. It might be possible; but still that is the principle we have retained in the Constitution, that the Legislature shall govern all the municipalities by general law. We have been seeking to avoid special legislation, to avoid the very thing about which so much complaint has been made, and say that they shall only pass general laws on the subject, giving the people of the cities the right to govern themselves. Now, if they pass an act of Assembly which is a general law, saying that cities shall be governed by one council, I am satisfied. If they will say that the people shall have one or two, as they see fit, I am satisfied with that, and so will the people of the different cities be satisfied with it. But why should we say here that every city shall have "a select and common council" or "councils?" There is no necessity whatever for it. That can all be provided for by the Legislature by general law.

So, in the third section, it is declared that a mayor shall have a qualified veto. Can that not be provided for by general law? What is the necessity for it in the Constitution? None whatever that I can see; and all these other matters of detail have been provided for in the report of the Committee on Legislation, where it is declared that "the Legislature shall not pass any local or special law"—that is, they must pass general laws—"regulating the affairs of counties, townships, wards, boroughs and school districts;" and again, they must pass general laws "in-

corporating cities, towns or villages," and all these different matters must hereafter be regulated by general laws.

I do submit that there is no necessity whatever, as I have just stated, for placing any such provision in the Constitution.

Mr. LANDIS. The proposition before the Convention, I believe, is to pass a section requiring that every city now existing or hereafter to be established shall be governed by a mayor and a select and common council. I find no objection to the section except so far as it requires that there shall be two branches of the city councils. To that I understand there is an amendment pending of the gentleman from Lehigh (Mr. Ainey) who proposes that they shall be governed by "a mayor and a council or councils, as may be prescribed by general law." I do hope that this amendment or something similar to it will prevail. I have in my district a small city which is governed by one council. It is not composed of two branches, as very many of the large cities are; but it is governed by a mayor and one council, and I presume the objection has heretofore been urged that if you require these small municipalities to be governed by two councils, you will impose upon them great expense and an additional burden and increased trouble, and it will only lead to embarrassment in the administration of their municipal affairs, because I conceive that they can be better governed by one council where the municipal wants are few and to some extent circumscribed, than they would be by having two branches of councils. I should be in favor, therefore, either of the amendment of the gentleman from Lehigh, or that we strike out of the article the section entirely. It is a matter that can be provided for by the Legislature, and I do not see that there is any very great and pressing want that any section on the subject should be embodied in the article, particularly when it gives rise to this trouble.

Mr. M'CLEAN. Though I have not the honor to represent a city, I hope it will not be considered presumptuous in me to venture an opinion as to the propriety of the section under consideration. It seems to me that it is the enunciation of a principle which is of value to cities and should be retained. In the article on the Legislature we have adopted the declaration of the Constitution of 1838, that the legislative power of this Common-

wealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives. I like the distinction to be made in the organic law that the legislative power of the people does not reside entirely in the General Assembly. It resides there for all general purposes, but for local affairs it resides in the municipal authorities. I think gentlemen representing cities on this floor should be anxious to retain the principle declared in this second section that the legislative power, so far as relates to cities, shall remain in the city authorities, the mayor and councils, as they may desire to have it expressed. I think it is an important principle and the committee have done well in expressing it in this second section and it should be retained.

Mr. BARDSLEY. If the object of the Convention is to make the new Constitution as concise as possible, we should vote this section down. It has no practical utility and simply consists of words without meaning. I am perfectly willing to leave the matter entirely with the Legislature. Cities will have to be governed; and I think that when the time comes to create a city, the then existing Legislature, familiar with the requirements of different localities and familiar with the necessities of the changing periods of our history, will be better able than we are today to regulate this subject. Let us remember that we are asked to pass a law—for this is not a constitutional article; it is legislation. It is directing how cities shall be governed, and it is in my opinion entirely unnecessary to insert any such provision.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Lehigh (Mr. Ainley) to the amendment of the gentleman from Dauphin (Mr. Alricks.)

On the question of agreeing to the amendment to the amendment, a division was called for, which resulted fifteen in the affirmative. This being less than a majority of a quorum, the amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment.

Mr. ALRICKS. I do not understand that we are legislating in this section; we are announcing a principle. It has been well said by the gentleman from Adams (Mr. M'Clean) that the legislative power of every city should be vested in a council

and mayor. We say more than that; we define the powers of the mayor, and we define in a measure the powers of the council; and in doing this, I apprehend that we are doing just what those who form an organic law ought to do. This subject has been already very fully considered in this Convention, and I apprehend that we are just restricting the Legislature to a proper extent. In times of high political excitement, the Legislature might try, even by a general law, to change all the officers of all the cities of the Commonwealth. They might find in a period of great excitement that it would suit the political views of a majority of the Legislature to make a thorough sweep of all the municipal officers. I apprehend that it is the duty of this Convention to keep things settled and permanent. It is our duty to avoid anything like oscillation. We should say here that the power of government, the power to make laws for each city, should be vested in the people of the city, that the mayor should have his certain limited power, and the councils should have their power, and then under these instructions the Legislature will pass all general laws for the construction of cities and for their government after they are constructed.

Mr. LITTLETON. When this section was first read, I had some doubts as to the propriety of its passage; but the discussion upon it has satisfied me that it ought to be adopted. It is simply an enunciation of a principle. It is not special legislation. It is not designating what power shall be given to cities which shall be created. It simply names the depository of municipal power and prevents the Legislature from making changes adverse to the interests of particular localities, as it might do under the guise of a general law unless this section be adopted. I think therefore that the objection made by my colleague (Mr. Bardsley) is not tenable. This section is not in any sense legislative; it is a general direction designating what body in a municipality shall exercise such municipal power as shall be conferred by the Legislature, and not naming any particular power to be exercised under this provision.

Mr. J. R. READ. I trust this section will be adopted for one reason if for no other, that we should specially designate what will be the legislative power of any city in the Commonwealth. I insist also that it is very important for this Convention to adopt this section in view of what

is contained in section ten of this article, which is of vital importance.

We all know that great wrongs have been suffered in this city because no means have existed for their proper investigation. This section specifies that the municipal power shall be vested in a council or councils, and then section ten provides that these councils, or either of them, shall have power to appoint a committee of their respective bodies or either of them, to investigate abuses, with the power to enforce the attendance of witnesses, with a means of punishing them if they fail to testify. Hitherto when local abuses have been called to the attention of the people and councils have appointed committees to investigate the frauds, subpoenas have been issued to interested witnesses who have flaunted them in the faces of the men who were honestly seeking the truth, and who have refused to testify because there was no power to punish them for refusing. The time has come when this should be remedied. The State is growing in wealth, importance and population; our cities are becoming powerful in wealth and increasing in population; and this subject of investigating local abuses should be left to the municipalities. They possess facilities for the investigation that the Legislature cannot have.

The Convention will therefore see the importance of establishing in this section the repository of municipal power, and then in the tenth section providing that these municipal authorities shall have the power to enforce the attendance of witnesses before investigating tribunals, with the proper power to punish for a refusal to testify.

Mr. ARMSTRONG. I hope the Convention will pause before it votes to adopt this section. It imposes on the Legislature additional restrictions in reference to cities; and we have already limited the law-making power of the State sufficiently in this regard. We have already provided that no law shall be passed concerning cities except a general law, and therefore there is no danger of special laws affecting injuriously particular localities. It is not wise for us to further restrict the power of the Legislature when we cannot foresee the exigency which may call forth the exercise of that power. It is much better to leave it to the Legislature without any trammels being placed in the Constitution that in the future may be found embarrassing and injurious.

On the question of agreeing to the amendment proposed by Mr. Alricks, a division was called for, which resulted thirty-four in the affirmative, and ten in the negative. So the amendment was agreed to.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

On the question the yeas and nays were required by Mr. Hanna and Mr. Alricks, and were as follow, viz:

Y E A S.

Messrs. Achenbach, Ainey, Alricks, Baer, Black, J. S., Bowman, Brown, Campbell, Curry, De France, Feli, Finney, Fulton, Guthrie Hemphill, Heverin, Horton, Knight, Landis, Lilly, Littleton, M'Clean, Mitchell, Newlin, Patton, Read, John R., Reynolds, Smith, H. G., Stanton, Temple, Walker and Wherry—32.

N A Y S.

Messrs. Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Beebe, Biddle, Black, Charles A., Bullitt, Calvin, Carey, Carter, Church, Cronmiller, Curtin, Dallas, Darlington, Dodd, Elliott, Ewing, Hall, Hanna, Hazzard, Lawrence, MacConnell, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Simpson, Struthers, Turrell and Wright—38.

So the section as amended was rejected.

ABSENT.—Messrs. Addicks, Baker, Banman, Barclay, Bartholomew, Bigler, Boyd, Brodhead, Broomall, Buckalew, Cassidy, Clark, Cochran, Collins, Corbett, Corson, Craig, Cuyler, Davis, Dunning, Edwards, Ellis, Funck, Gibson, Gilpin, Green, Harvey, Hay, Howard, Hunsicker, Kaine, Lamberton, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mann, Mantor, Metzger, Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Ross, Runk, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Van Reed, Wetherill, J. M., Wetherill, John Price, White, David N., White, Harry, White, J. W. F., Woodward, Worrell and Meredith, *President*—63.

The PRESIDENT *pro tem.* The third section will be read.

The CLERK read as follows:

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

Mr. BIDDLE. I trust now that, the preceding section having fallen, this will be voted down also.

The section was rejected.

The PRESIDENT *pro tem.* The fourth section will be read.

The CLERK read as follows :

SECTION 4. The Legislature shall pass no special law creating any municipality, or regulating its form of government or the management of its internal affairs, or altering the charter of any city now existing, or creating a public commission for any purpose, unless such law is specially asked for by a majority of each council, for a definite object. Nor shall such special law have any force or effect unless accepted by a majority of each council, and by a majority of the legal voters voting at the next municipal election after the acceptance by the councils. Every municipality shall have power to pass laws for its own regulation not repugnant to the Constitution of the United States, or of this Commonwealth.

Mr. NEWLIN. I offer the following amendment, to come in at the end of the section :

"No debt shall be contracted or liability incurred by any municipal commission except in pursuance of an appropriation therefore having been first made by the councils."

This amendment does not interfere with the power of the Legislature to create commissions.

Mr. LITTLETON. I rise to a point of order. The amendment is not germane to the section before the Convention. As I understand the amendment it restricts the power of councils.

Mr. NEWLIN. No, sir; it does not do anything of the kind.

Mr. LITTLETON. It imposes a restriction other than a legislative one, and as this section is a restriction upon the Legislature, no such amendment is germane.

The PRESIDENT *pro tem.* The Chair will state that he does not think the amendment pertinent to the section; he cannot see any possible applicability of it to the section; but he will not rule it out of order.

Mr. GUTHRIE. I think a section which we have adopted in the report on revenue, taxation and finance has provided for this subject by limiting the amount of municipal and borough debts.

Mr. NEWLIN. That does not reach the object which is designed by this amendment. The section adopted in that arti-

cle simply provides that the aggregate debt shall not exceed a certain percentage upon the assessed value of property; but the proposition here is that no debt whatever shall be created or liability incurred by any municipal commission without an appropriation first made by the council to meet the expenditure.

On this question, I appeal to gentlemen not only from cities but from the rural districts. I should like to know, for instance, how my friend from Chester (Mr. Darlington) would feel if the Legislature were to create a commission composed of A, B, C and D, give them power to fill their own vacancies, and confer on them power to spend as much money of the county of Chester or of the borough of West Chester as they might see fit without asking any permission from the local authorities. That is what it is intended to prevent by this amendment. It is not designed to prohibit the Legislature from creating a commission, but only to restrict municipal commissions in spending the public money. For instance, a commission is provided to build a court house; that is well enough, provided the money of the tax-payers which is to build that court house be appropriated by their representatives elected by them, and not by an irresponsible commission appointed by name by the Legislature, and having power to fill their own vacancies or, perhaps, appointed by a court.

The money of the tax-payers should be spent only by those elected by them. The details of spending that money, after it is appropriated, may be very properly left to a commission; but the raising of the money and the incurring of the indebtedness should be under the direct authority of the city councils; and when I state to gentlemen here that the debt of this city is now \$51,000,000, I think they will see some propriety in providing that future expenditures of millions and millions of money should be under the direction of the city councils and not of persons who are neither elected nor appointed by the people in any way, shape or form.

The PRESIDENT *pro tem.* The Chair will state after reading the section carefully and the amendment with as much care as he can, he cannot see how it is applicable. If the gentleman can point out wherein it is applicable, the Chair may rule differently.

Mr. NEWLIN. I will withdraw it and put it in somewhere else.

The PRESIDENT *pro tem.* The section is before the Convention.

Mr. DALLAS. I desire to call the attention of the Convention to some practical considerations connected with the section in order that we may act upon it intelligently. Section four, at the outset, provides that "the Legislature shall pass no special law creating any municipality or regulating its form of government." We have in the article upon legislation that provision already in almost precisely the same words :

"The Legislature shall not pass any local or special law incorporating cities, towns or villages or changing their charters."

That is already in the article on legislation, and it is not necessary to repeat it here.

"The Legislature shall pass no special law creating any municipality or regulating its form of government."

"Regulating its form of government" is also provided for in the article on legislation, to wit, in this section :

"The Legislature shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts."

Then all the rest of the section, except that which provides that no public commissions shall be created by special law, is provided for in the article upon legislation down to the word "every," in the eighth line. I propose, therefore, to amend the section so as to strike out such portions of it as I deem to be unnecessary, and only because I deem them to be unnecessary; I would strike out all the section down to and including "councils," in the eighth line, except so much as will make it read :

"The Legislature shall pass no special law creating a public commission."

Mr. EWING. Allow me to interrupt the gentleman. Section 22, of the article on legislation, already passed on second reading, absolutely prohibits any such thing. We do not need this, therefore.

Mr. DALLAS. Very well. One step further; I move to strike out all the section down to and including the word "councils;" there is none of it then necessary. That leaves of that portion of the section only what reads as follows :

"Every municipality shall have power to pass laws for its own regulation not repugnant to the Constitution of the United States or of this Commonwealth."

And that latter portion I propose to amend by inserting, after the word "have" in the ninth line, the words "the exclusive," and by striking out in the tenth line the words "of the United States or," and insert in lieu of the latter words stricken out the words "or laws," so that it would then read :

"Every municipality shall have the exclusive power to pass laws for its own regulation not repugnant to the Constitution or laws of this Commonwealth."

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Dallas.)

Mr. CAMPBELL. I ask for a division. Let the first question be on striking out down to the word "councils" in the eighth line.

Mr. LITTLETON. Before a division is had, I will state to the gentleman from Philadelphia (Mr. Dallas) that I desire to amend the last clause, and I ask him therefore to offer the first amendment first, so that we can amend the second division.

The PRESIDENT *pro tem.* The amendment is under consideration, and a division being asked the first division is to strike out all the section down to and including the word "councils" in the eighth line.

The first division of the amendment was agreed to.

The PRESIDENT *pro tem.* The second division of the amendment is to make the section read :

"Every municipality shall have the exclusive power to pass laws for its own regulation not repugnant to the Constitution or laws of this Commonwealth."

Mr. LITTLETON. I offer the following as a substitute for that :

"Every municipality shall have the exclusive power to pass laws for its own regulation, including the assessment, general or special, of the cost of such municipal improvements as it may from time to time direct to be made or renewed : *Provided*, That such laws shall not be repugnant to the Constitution of the United States or of this Commonwealth."

Mr. BIDDLE. I do not understand that proposition. I hope the gentleman will explain it.

Mr. LITTLETON. The amendment is intended to give to the city in the first place the right to pass exclusive rules and regulations for its municipal affairs, such for instance as the collection of its taxes. The city of Philadelphia, imposing a tax

rate of two dollars and fifteen cents on the hundred, and collecting from taxes about \$10,000,000 per annum, has not power at the present time to regulate the mode of the payment of those taxes, and it has a very loose system.

My proposed section, in all probability, vests in the city the right to regulate such a matter as that, very important to it, and very difficult sometimes to obtain from the Legislature. In addition to that is the power to impose assessments, either general or special—that is, upon the taxpayers generally or upon special property owners where specially benefited—for the cost of such improvements as the local authorities may direct to be made or renewed. It gives to the municipality that power which in my judgment it should possess for the proper management of a large city, having in view, of course, as I necessarily have, what I suppose to be the interests of the city of Philadelphia.

I think such a concession from the legislative power to the municipal power would be of great advantage, and I trust that the amendment as proposed by me, as I have added the words suggested by the gentleman from Philadelphia, will be adopted.

Mr. TEMPLE. I hope we shall have the amendment read.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK read the amendment.

Mr. TEMPLE. I should like to ask the mover of the amendment what he means by the assessment of the cost of public improvements.

Mr. LITTLETON. I mean the case of a street directed to be paved, or a pavement directed to be renewed entirely, or a culvert put down, or any other municipal improvement—their name is legion, but they are very easily and very readily understood.

Mr. ALRICKS. I am a little afraid that that amendment will not meet the approbation of the House, and I am very glad the mover has been called on for an explanation. It is but a few days since we had this very question before the House, and the House by a very decisive vote voted down a proposition like this. The idea of improving a man out of his house and home is one that certainly would not meet my approbation. I should be sorry to give the right to the councils or to any other body to assess a certain tax upon the property of a person

which they might suppose was benefited by an improvement.

The municipality should have power to make all improvements, and they have that general power, and they should have a power to assess general taxes; but this thing of giving them special power to tax a special property, supposing that it will be improved, when the owner of the property might think otherwise, and when the result might show that they were mistaken, is a power that I never would be willing for one moment to commit to the city councils or any other body of men. I hope, therefore, the amendment to the amendment will not be adopted.

Mr. BIDDLE. I concur with the gentleman from Dauphin in opposing this proposition and pretty much for the same reasons. We have refused to the Legislature the power that was attempted to be given to them to do this very thing, and I think it would be unwise to the last degree to give them the power of assessing against a property the cost of an improvement which, as we know, in the State of New York has more than once eaten up the whole value of the property.

Now, if we would not give to the Legislature at large such a power as this, why should we give it to any municipal body? The people do not want it; and, besides, as we have struck out the second and third sections, leaving the whole subject of municipal government to be provided for by laws hereafter, why retain this?

Again, in regard to the mere verbiage, it seems to me a perfect absurdity to tell us that municipal laws shall not be repugnant to the Constitutions of the Federal and State governments and to the laws of the State. What is the use of saying that? A small body cannot pass such laws. But, on the general question, I think it unwise to give any municipal body such a power as this. I would no more trust the councils of a city than I would trust the Legislature of a State with it. I hope it will be voted down.

Mr. SIMPSON. I trust the amendment of my colleague from the city (Mr. Littleton) will not be adopted, because it seems to me that it is designed to reach a particular case. Some time ago, a good many years ago, under the authority of the city of Philadelphia, Broad street was paved with a pavement. Subsequently the city of Philadelphia saw fit to put down a new and improved pavement and undertook to assess and collect the cost of the new pavement from the property owners; and

the Supreme Court said, "you cannot do that." It seems to me that this amendment is calculated to meet that case. That ought not to be permitted.

Mr. LITTLETON. I should like to say a word simply in reply to the gentleman who has just spoken.

Mr. BIDDLE. My friend has spoken once.

Mr. LITTLETON. If that objection is raised of course I must take my seat.

Mr. BIDDLE. I do raise it.

Mr. LITTLETON. It certainly comes with a very bad grace from a gentleman who has occupied as much time as the gentleman from Philadelphia (Mr. Biddle.)

Mr. TURRELL. I concur in the remarks made by the gentleman from Dauphin, (Mr. Alricks,) and the gentleman from the city who succeeded him (Mr. Biddle.) I would not give this power even to the Legislature without submitting the question to the people. I much prefer the section, because it has that provision in.

I have seen in this Commonwealth a board of school directors, I have seen a common council, without the knowledge of the people, go to the Legislature, and obtain the right to tax the municipality without limit and without any consultation with the people whatever.

Now, sir, in whatever section we pass here, I want to see something that will bring that matter before the people, before it shall be binding upon them. It is the easiest thing in the world sometimes where the people of a city are careless about the election of members of councils, to put a class of men in who pay scarcely a dollar of taxes, and they will victimize the tax-payers of the town to any extent whatever. I think we should protect municipalities against such action. We should not put them in the power of any such body of men, nor render them liable to be taxed without having the subject passed upon by the majority of those to be affected by it.

Mr. TEMPLE. When I asked the Clerk to read the amendment of the delegate from Philadelphia, (Mr. Littleton,) I thought I saw something in it that I did not approve of, and after the remarks made by the distinguished delegate from Philadelphia, (Mr. Biddle,) I certainly shall not vote for this amendment. I was disposed to vote for any general section that was applicable to this subject; but I believe it is admitted now by the mover of this

amendment that it is designed to meet a certain case and to over-rule a decision of the Supreme Court. No such thing should be put into the Constitution, as has been said by the gentleman from Philadelphia (Mr. Simpson.) The Supreme Court did decide that the city of Philadelphia could not make the people on a particular street pay for a pavement which had been laid down there.

Mr. LITTLETON. By a bare majority.

Mr. TEMPLE. No difference; it was a decision of the Supreme Court, and I certainly did not think that my colleague would have moved an amendment having in it only that one principle. I shall not vote for it.

Mr. GUTHRIE. I am in favor of the principle of giving to the mayor and to the councils full legislative power for the municipality; but as the Convention has seen proper to decide that there shall be no mayor and that he shall have no veto power, I am not willing to trust the councils beyond the restricted powers already granted to them here. Therefore I shall vote against the amendment.

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 offered by the delegate from Philadelphia (Mr. Dallas) to insert the word "exclusive" before "power," and to strike out "of the United States," and insert "or laws."

Mr. DALLAS. I should like to state to the Convention that the purpose I had in view in proposing to insert the word "exclusive" was simply to give to the local authorities of a city the exclusive power to govern its own internal affairs, my view being that for every local community there should be local self-government in all those matters which affect only the locality, meaning thereby their interior regulations; and that the Legislature of Pennsylvania should not be able to say to the city of Philadelphia, or to the city of Pittsburg, that its streets should be opened in a particular manner, or that railway tracks should be laid down in its highways without giving to the direct representatives of that municipality the right to express for those they directly represent their real sentiments on the subject; and for this reason I believe, disagreeing with the gentleman from Susquehanna, (Mr. Turrell,) and the gentleman from the First district, (Mr.

Biddle,) that the councils of the city are better to be trusted with its internal management than the Legislature of the State; they are the direct representatives of the people of the city, and it is the people of the city who speak through them.

MR. S. A. PURVIANCE. Will the gentleman from Philadelphia allow me to ask him a question?

MR. DALLAS. With pleasure.

MR. S. A. PURVIANCE. In the absence of any general law prohibiting councils from passing laws regulating their own affairs, is there anything to interfere with their right to do so?

MR. DALLAS. The Legislature may at any time pass laws entirely inconsistent with the views of the citizens of any city, upon their own internal affairs, and they have no power to prevent it. Therefore it is that I desire that the exclusive power should be vested in the citizens of Philadelphia, the citizens of Pittsburg, of Reading or any other city of the Commonwealth to manage their own affairs in their own way; that there should not be taxation for local purposes except upon local representation assenting to it. That is the purpose of the amendment.

In addition to that, I have stricken out the phrase "contrary to the Constitution of the United States or," simply because it would be absurd for us to insert such a provision in the Constitution of the State of Pennsylvania. The Constitution of the State of Pennsylvania itself, if repugnant to the Constitution of the United States, cannot stand; and it is, therefore, absolutely ridiculous to provide by it that a municipal ordinance shall not stand against the Constitution of the United States! Therefore it is that I propose to strike that out.

MR. LITTLETON. I trust, Mr. President, that this amendment will be adopted, and I hope that the Convention will see that there is some propriety in giving the local authorities of large cities absolute control over matters purely local in their nature. Why should we have to go to the Legislature and ask acts of Assembly to be voted upon by men living two or three hundred miles away from a city like Philadelphia to regulate its local affairs? Of course, those members are not able to know the particular needs and wants of the city. Certainly, where there is such a large population as there is in the city of Philadelphia, such a large aggregation of property, having an assessed value larger in amount than a great many of

the States of the Union and a population larger than one-half of those States, why should we not have conferred upon us the right to control matters local in their nature? I regret exceedingly that the Convention has not seen fit to adopt the amendment proposed by myself, because I do think it of vast importance to the city of Philadelphia, but that having failed, I trust we shall get at least the measure of power proposed by the amendment now pending.

MR. ARMSTRONG. Mr. President: It is to be observed that we have already provided that all this regulation of municipalities shall be by general law. Of course, it follows that whatever law is made applicable to Philadelphia must be equally applicable to every other municipality in the State. If it were a question that affected Philadelphia alone, I should be much disposed to follow the judgment of the gentlemen here who so ably represent this city; but when it is proposed to extend this power all over the State, it becomes, in my judgment, exceedingly dangerous. I know that we should not be willing in our section of the State to entrust such enormous power to an irresponsible legislature, if you please so to call it, of a city. Its councils are not men of that character representing both property and intelligence, to whom such powers should be entrusted.

Again, the word "municipality" is by no means of fixed determination. It may or it may not include counties. There are able lawyers who think that the word "municipality" does not include a county, and there are others who believe it does. I think every reason which has controlled the judgment of this Convention in voting down the second and third sections, applies with great force to this; and it is a dangerous power which ought not to be vested, covering the whole State, and thus placing all the cities (even if the word municipality has no other extent) in a board of irresponsible men. I trust it will be voted down.

MR. EWING. Mr. President: There is perhaps no subject of modern government that is so doubtful a problem at the present day as that of the government of large cities. Almost every system that has been tried has at one time or another proved a failure in some respects, and experiment after experiment is being tried in this country in the cities of the various States. If there were nothing else than that fact, which every man who has paid

attention to the subject for the last few years knows, it would be enough to make us careful in regard to the provisions we shall insert in the Constitution in regard to the government of cities.

There are several provisions in this article now under consideration that commend themselves to my judgment and that I should like to see tried as an experiment; and yet I have voted against those sections that have been voted down, and I think they have been properly voted down, because we may well leave the government of the cities to be determined by the Legislature under the restrictions which we have already laid down for the Legislature. We have provided that they shall only pass general laws; we have hedged in their power and authority and their manner of passing laws, so that I think we can fairly trust them to delegate to the municipal governments the necessary power to regulate their own internal affairs, to lay restrictions on city councils or whatever form of legislative government may be given to cities so as to prevent the abuse of the authority delegated to them. I suppose if we finally pass the article on legislation, which has already passed on second reading, it will be utterly impossible for the Legislature to enforce the kind of acts that have been complained of by gentlemen here from this city and that are complained of in our region—local and special laws affecting particular localities in the different cities. I should be very glad to see in the Constitution in some place, if it is not in already, (and I am not certain about that,) a provision which would prohibit the Legislature from granting the right to any railroad to pass along the streets of a city without the consent of the local authorities. I think that should be done; but nevertheless, if it is to be left to the unrestricted power of one or the other body, I would very much prefer to trust the Legislature to determine what streets should be taken for railroads or anything of that sort than I would trust the city councils with the unrestricted power that would be given in this section.

Mr. NILES. Will the gentleman allow me to make a suggestion?

Mr. EWING. Yes, sir.

Mr. NEWLIN. A case occurred this winter in which the Legislature by the unanimous vote of the members from this city put two railway tracks on the principal business street of Philadelphia, which was already occupied by two other

railway tracks, and in some places did not leave room for a dray to be turned between the curbstones and the tracks. The city government was opposed to it; but the Governor when the bill was presented to him said, "the representatives of the city have unanimously voted for this bill, and I must sign it." The owners of every foot of land on both sides of the street sought to be occupied by the railroad, protested against the bill.

Mr. EWING. I have just said that I would limit the power of the Legislature so as to require the consent of the local authorities to the laying of railway tracks in the streets. I will say further in regard to the case just brought to my attention, that having looked at the street itself, having seen a little in regard to the laying of street railroads on streets much narrower than that, and having read also the statements of the Philadelphia people in their papers and in their meetings, I think that the Legislature was about right in that matter, and the city councils were wrong in wanting to prohibit those tracks being laid down. I would, however, have required the consent of both Legislature and councils.

I was going to say that as a matter of experience in our region of the State and in our city, the very worst legislation we have ever had in relation to the city has been that which was asked and demanded of the Legislature by the city council—I mean special local legislation—and frequently the Legislature has stood guard between the people and the city councils and has refused to pass legislation that was asked by the city councils, and which would have been very injurious to the people of the city.

I am entirely unwilling to vote for such a power as would be granted to city councils by this section, even as amended. I think that we can much more safely leave it to the Legislature to determine by general law how and in what manner this power of local legislation shall be vested and exercised. I am in favor of local legislation; but if we grant it, in order to grant it safely for the people of the cities we must restrict it; we must go into the same kind of general restrictions on the power of municipalities which we have gone into with regard to the Legislature.

Mr. KNIGHT. Allow me to call the gentleman's attention to the fact that in the eleventh section of the article on railroads and canals, already passed in committee

of the whole, it is provided that "no street passenger railway shall be constructed within the limits of any city, borough or township without the consent of the local authorities."

Mr. EWING. I had the impression that such a provision had been adopted; and that covers the objection of which I have spoken. I shall vote for a part of the amendment of the gentleman from Philadelphia, (Mr. Dallas,) because I think it improves the section. I would prefer, however, that he should strike out the word "exclusive." I do not think it means anything here, or else it means too much; but the rest of his amendment is very desirable, and I shall vote for it. I shall, however, vote against the entire section as it is, and I believe it will be to the advantage of the cities that this section, with the others which have been rejected, be voted down, and the whole matter left to be regulated by the Legislature, under general law, according to the restrictions we have already imposed.

Mr. BARDSLEY. Mr. President: When the Convention was in committee of the whole in the consideration of the article on legislation, and more especially when it was considering those sections giving to municipalities the power to govern themselves, members were very emphatic, and the whole burden of their arguments went to prove that they intended in good faith to give the cities the power of self-government. That purpose was then manifested, however, only in a general way by providing that there should be no special laws passed on such subjects. Now, we come this morning to the subject directly, and this Convention is about to vote on the question whether the cities shall have self-government or not. The word "exclusive" in the proposition of the gentleman (Mr. Dallas) is the pith of this section; and if the members mean what they said in committee of the whole, they will undoubtedly adopt his amendment and pass the section as thus amended.

The members of the city councils are the direct representatives of the people of the city. They come from their own neighborhoods; they come there elected by their immediate friends and constituents; and the power is held by the people once every year to turn out of office those who will not study the interests of the whole community. The experience of the cities with their members of the Legislature is such as to make the people

earnest and anxious in the desire that this Convention shall make a radical reform in the particular now under consideration. What we ask in this city, for example, is that we shall be allowed to pass such laws as will best conduce to the comfort and prosperity of our people. If the Convention mean to say that they will rather trust the members from Tioga and Mercer and the other counties of the State to legislate for Philadelphia, they will vote this proposition down. If they think the people of the large cities know best what is wanted in legislation for them, they will approve this amendment and the section as amended. Now, I ask in the name of the people of the large cities of this Commonwealth, but more especially for Philadelphia, where we have felt this evil to a greater extent than elsewhere, that we may be relieved from the onerous and obnoxious laws that are passed every year against the interests of the people of this city. We ask that we may be allowed to use our own judgment, that we may be allowed to be instructed by our own people as to what legislation is needed and required for the cities, and I hope that this Convention will approve and endorse the section now under consideration.

Mr. MINOR. Mr. President: I cannot see the force of the statement made by gentleman from Philadelphia (Mr. Newlin) as an argument, for I can point him to an instance of a city in this State where just about the time that the Legislature did the act complained of in this city, namely, authorizing an additional railroad track on a street, the council of that city did precisely the same act as to that city, and authorized the laying of railroad tracks along a street to the great injury to the business of the street. I do not think there is any argument in that either way. The Legislature sometimes abuses its powers, and the common councils sometimes abuse their powers, and in some of these cases there is room for difference of opinion whether the act really was an abuse of power. One instance will offset the other. There was supposed to be no remedy in one case but to go to the Legislature. In the other case it is claimed that there is no remedy except to take the power from the Legislature and give it to the city authorities.

Now, sir, look at this subject for a single moment. This entire demand to leave the exclusive power in municipal affairs to the city governments comes

from the city of Philadelphia, and it comes solely on account of the special acts which have been passed by the Legislature. The source of the evil is the special legislation made applicable to this city in particular cases and not to other cities. Now, sir, we have removed the cause of the evil; we have adopted provisions which are designed to prevent the Legislature from doing such things in the future. You have dried up the great cause, and as a general rule when you dry up the cause then you substantially cure the evils that have flowed from it. It cannot be repeated in the future. Shall we take away all authority from the State Legislature and vest it in the city legislatures, as numerous as the cities themselves? I lived in a city several years where I had occasion to carry on suit after suit under the general laws of the Legislature against the councils of the city where they have perpetrated grievous wrongs—not where I live now, but where I have lived formerly. In some instances the general oppression would be practiced, and our only relief was under the general laws of the State. I say it is wrong for us for all time to tie this up and say that there shall be vested in the councils exclusive, paramount power, perhaps even beyond the courts themselves. Councils, knowing that they have the power, will use it. Power possessed draws to itself power. There is always an inducement to abuse when you cannot appeal to any other authority to check it.

I hope, therefore, we shall leave it to the Legislature, made up of persons from all the cities of the State, from the counties, boroughs and townships of the State, to regulate this matter by general laws as their wisdom in the future shall direct, and not put this thing in our Constitution on account of evils arising from causes which we have already cured.

Mr. BIDDLE. If I thought the amendment offered by my colleague from Philadelphia (Mr. Dallas) would have the effect he attributes to it, and no other, I should vote for it, but I am satisfied that a very little reflection upon the amendment will show that it has not that effect which he attributes to it, and that it has a great deal that is very bad.

Now, in regard to the case put in argument as to the laying of an additional track of a passenger railway down one of the principal avenues of business in this city, which I concur with every delegate from the city in believing to be a great

wrong, it would not touch the case at all. Ever since the decision in the Philadelphia and Trenton railroad case, in 6th Wharton, every lawyer knows that the streets of a city stand precisely as the other highways of the Commonwealth, and they are not the exclusive property of the municipality or subject to its control. Therefore, no language that you can put in of the kind used by the gentlemen from Philadelphia (Mr. Dallas) would reach that case, because it cannot be a subject of exclusive municipal government. It would be absurd in the teeth of those decisions so to regard it. We should be saying, or trying to say, in effect, that the streets were not highways, that the public squares were not the property of the Commonwealth at large. Therefore, it would be futile to reach that outrage. I agree if we can by apt words put in somewhere, either in this article or elsewhere, that the streets of no municipality should be occupied for improvement purposes without the consent of the municipal government, it would be well. It is, I understand, in the railroad report. Therefore that is not necessary here. That is the case which is put.

So much for what it would not prevent. It certainly would not have that effect. The language suggested by the amendment would not have the effect attributed to it. I agree with the gentleman from Crawford who spoke last, (Mr. Minor,) that there might be a great many things under the generality of this language attempted by the municipal governments which would be wrong to the last degree. I am not willing to give to them by this section indirectly the power which was attempted to be conferred upon them by the amendment of the gentleman from Philadelphia, (Mr. Littleton,) which was voted down a little while ago. I do not know whether the effect of this language might not be just to reach that case. I am unwilling to authorize them to deal with all the property within their municipal limits, as they please, which this would seem to confer. I do not believe it is right, and I do believe that very often the good sense of the Legislature has prevented just such projects as that.

If, with the limitations affixed in the article on corporations, we prevent these manifest outrages of allowing the streets of the city to be occupied without the consent of the municipal bodies, I am content to

leave the legislation of the State just as it is now. If you turn to section eleven of the railroad article, as re-printed, you will find this language:

"No street passenger railway shall be constructed within the limits of any city, borough or township without the consent of the local authorities."

Thus we get rid of that whole subject, Mr. KAINE. Allow me to ask a question?

Mr. BIDDLE. Certainly.

Mr. KAINE. Is not that confined to street railroads alone?

Mr. BIDDLE. It is very easy in the appropriate article, if it is desirable to make the provision broader, to make it so. That is not the point. I merely want to show that the outrage very justly complained of, which I feel quite as much as any citizen of Philadelphia, cannot be perpetrated again under the eleventh section of the article on railroads; but there might be a great deal of municipal legislation under this word "exclusive," which would be bad to the last degree, and I, therefore, shall vote against the amendment and the section.

Mr. DE FRANCE. In the article on the Legislature, the first section provides as follows:

"The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives."

It seems to me that if this amendment of my friend from Philadelphia passes, we are making a very great exception. We are first vesting the legislative power in the Legislature and then we are making an exception of about all matters in regard to cities. It seems to me that that ought not to be the case. We might make it so that the cities would have power in the first place, to the extent mentioned by my friend, (Mr. Biddle,) but if you make the power exclusive, the Legislature could not annul any act of the city councils, nobody could do it except the courts. I suppose they could; but the legislative power could not do it; because the cities would have the exclusive power of governing themselves just as much as the State of Pennsylvania has the exclusive power of governing herself.

Although I want the cities to have some power in the first place, I believe the city councils would perhaps commit as great outrages as the Legislature and perhaps more if they had the exclusive power of determining how they would be govern-

ed in every case that they chose about their municipality.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from the city (Mr. Dallas.)

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

The section was rejected.

The next section was read as follows:

SECTION 5. No city shall have the power to create hereafter a debt exceeding two and one-half per centum upon the assessed valuation of the real and personal estate, within its corporate limits, except to suppress rebellion or repel invasion of the State.

Mr. EWING. That is already provided for.

The section was rejected.

Mr. NEWLIN. I offer an amendment to come in here, as a new section:

"No debt shall be contracted or liability incurred by any municipal commission except in pursuance of an appropriation therefore having been first made by the councils."

That is the amendment which I offered a short time ago, and which the Chair ruled out of order as not germane to the then pending section. I need not go over the argument which I then used. I simply desire the Convention to bear in mind that the greatest power of any people is the power of the purse; and if this Convention cannot give to the municipalities the power to spend their own money, and if it permits an outside body, like the Legislature, to create commissions and name the individuals, and authorize them to fill up their vacancies and to spend as much money as they see fit, without any let or hindrance whatever, it is a most monstrous proposition.

When any question affecting a township or a borough is up, this Hall resounds with eloquent speeches from every part of it on behalf of the counties and the townships; but gentlemen from the interior—

Mr. DEFRANCE. I should like to ask a question.

Mr. NEWLIN. Certainly.

Mr. DEFRANCE. Does not the Legislature of Pennsylvania govern the counties and townships as well as the cities?

Mr. NEWLIN. Certainly it does.

Mr. DEFRANCE. You want them not to govern the cities as they govern the rest of the State?

Mr. NEWLIN. Not at all. The gentleman has evidently not listened to the proposed section. It does not prohibit commissions. It only says that these commissions shall not spend the public money except by the authority of the local government; that is to say, that councils shall appropriate the money before the commissions shall spend it. The commissions may still exist and superintend the spending of the money; but the levying of the taxes should be by the local authorities—the councils of the city.

Mr. TEMPLE. I consider this proposed section to be very wise and judicious. I do not think there has been any other article placed in the Constitution which will better suit the people of Philadelphia than this will, and I desire gentlemen who reside outside of the city to give it their careful consideration before they vote it down.

It may be called legislation. Some gentlemen are very ready to say that it is only legislation and therefore should not go into the Constitution. I submit in view of what has taken place in the past that this Convention can pass this section without being liable to this objection. It will not do to say that this is a matter which can safely be left to the Legislature in the future as it has been in the past. The trouble is that the Legislature has had control of this subject. The case referred to by my colleague (Mr. Newlin) is true. The Legislature of this State did create a commission for this city, which I undertake to say is odious to its people, which the people would never have sanctioned, if the subject had been left to them for determination, and which even the councils of the city would never have created, with the power and the authority which this commission wields at this time.

This commission and its powers have been described by the author of this amendment. It not only has supervision of certain public works of this city, but it absolutely has the power to levy and assess a tax for the purpose of making those improvements. If the city councils—no matter for what reason, even the very best, were to refuse to give these commissioners the money they may demand, they have the authority to go into court and by *mandamus* compel the city treasurer to pay any and all bills which they contract. I am not here to say that these commissioners have done anything that is not right and proper. I have no doubt they

have conducted their business in the proper spirit and in the right direction. I submit, however, that the power lodged in their hands is one of which the people justly complain. We do not know who will compose that commission five years hence, or even a year hence. We do not know but that by death or resignation the entire commission may be changed and a different class of men control this mighty power for the destruction of the welfare of this city. At present the commissioners are honest, competent, respected citizens; but the worst feature of the law creating the commission is that the people of the city have no voice in selecting them. The commission itself supplies vacancies that occur by death, resignation, or otherwise, and it could easily happen that this commission could become composed of men who the people would desire to drive not only from the commission but from the city, and yet those men, entrenched behind the act creating their immense powers, could exercise their will unrestrained, and the people would be compelled to pay any bills they might incur.

As I said a moment since, this is not a question of whether this is legislation. The proposed section must not be resisted in this way. The Convention must not leave the subject to the Legislature, but must come to the help of the people against the Legislature. The subject has been referred to the Legislature for settlement and they have settled it on a basis which is in contradiction of every principle of right. They have not settled it as the people of the city or of the State want it settled, nor as the Legislatures that have assembled since that which created this commission would have settled it.

Therefore, I trust that the amendment offered by the gentleman from Philadelphia will be adopted and made a part of the Constitution, so that we shall not be compelled to submit to such iniquitous measures in the future.

Mr. CALVIN. I desire to say that I approve of the proposition submitted by my friend on my right (Mr. Newlin.) I have no doubt from all I have heard on the subject from gentlemen in this Convention, and from what I have read in the newspapers, that this city of Philadelphia has been victimized most outrageously by the Legislature; and for my part I feel very anxious to provide proper remedies against a repetition of these operations. I will also say for myself, and I think I can say for the whole country

delegation, that we shall be willing at any time to support any measure that is considered necessary to the interests of Philadelphia if the gentleman from Philadelphia will only agree upon what they want.

Mr. BIDDLE. We are all agreed in this.

Mr. J. R. READ. I concur heartily in the section as offered by my colleague, (Mr. Newlin,) but I desire to suggest a verbal alteration. Inasmuch as the Convention has seen fit not to recognize the term "councils" in this article, I move to strike out that word where it occurs in the new section and insert the words "municipal government."

Mr. C. A. BLACK. I would suggest "municipal authorities."

Mr. NEWLIN. I accept the amendment of my colleague from Philadelphia.

Mr. BIDDLE. I only desire to say that the whole delegation from Philadelphia is agreed upon this amendment.

Mr. EWING. And also the delegation from Pittsburg.

Mr. SIMPSON. I ask for the reading of the amendment.

The CLERK read as follows:

"No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation therefor having been first made by the municipal government."

The amendment was agreed to *nem con*.

The CLERK read the sixth section of the article as follows:

SECTION 6. Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its permanent debt.

Mr. EWING. I suppose from the way this section reads that it would require every city to have a sinking fund, whether it has a debt or not. Those who think a public debt is a public blessing may think this section ought to be put into the Constitution. I do not. I can see no use for such a section, and in fact I have never been able to see any particular use in a sinking fund.

Mr. BOWMAN. I think that I can see some use in this section, whether it means that every city shall incur a debt or not. As a rule the cities all have debts, and the question raised by the gentleman from Allegheny is not a proper one to be introduced into this discussion. In looking over the State I do not find a city that is not in debt; and our little city that is not a year old has a debt hanging over it, the payment of which I do not believe will be seen by any child yet born. I want

something put into this Constitution that will compel the city councils to create a sinking fund that shall be a pledge and an irrevocable pledge for the payment of the municipal debt, whatever that may be.

Mr. LITTLETON. I trust that this section will not be voted down. Certainly it does not mean that a city that has no permanent debt shall provide a sinking fund. It simply means that where there is a permanent debt there shall be a sinking fund provided, and the necessity of such a thing cannot be questioned. We have a sinking fund in the city of Philadelphia that has over eleven millions of dollars invested, and we consider that a very desirable thing here.

Mr. SPRUTHERS. I wish to suggest a verbal amendment. In place of the word "permanent" I would insert the word "funded." "Permanent" might imply that the debt should remain a debt forever and never be cancelled. The term "funded debt" will answer all the purpose that is desired by the word "permanent" and will obviate the objection that I have suggested.

Mr. BOWMAN. That is a better term.

The amendment was agreed to.

On the question of agreeing to the section as amended a division was called for, which resulted thirty-six in the affirmative, and thirteen in the negative. So the section as amended was agreed to.

The CLERK read the next section as follows:

SECTION 7. No city shall, by a vote of its citizens or otherwise, become a stockholder in any company, association, or corporation, or obtain money for, or loan its credit to, any corporation, association or party.

Mr. NILES. This is provided for in another place.

The section was rejected.

Mr. GUTHRIE. I offer the following amendment to come in at this point as a new section.

"SECTION —. No territory shall be annexed to or consolidated with any city or borough, except at the request, expressed by a vote at a regular election, of a majority of the qualified electors residing in the territory proposed to be annexed."

The amendment was rejected, there being on a division ayes nineteen, not a majority of a quorum.

The CLERK read the next section as follows:

SECTION 8. A municipal officer who has not accounted for and paid over money

officially in his hands, shall be ineligible to any municipal office:

Mr. BARDSLEY. I desire to offer an amendment to come in on the second line after the word "hands." It is to insert the words "within the time prescribed by law."

The amendment was agreed to.

Mr. ARMSTRONG. I wish to suggest, as a verbal correction, whether it would not be better to strike out the words "money officially," which is an awkward expression, and say "all public moneys."

The amendment was agreed to.

Mr. HEVERIN. I offer this as a substitute for the section :

"No delinquent municipal officer shall be eligible to any municipal office."

Mr. CASSIDY. I desire to call the attention of the chairman of the committee, as well as the mover of the substitute, to whether it is the intention of this section to imply that a man is not to hold office again at all, and if so, then exactly what the word "delinquent" means, because a man might not be able upon the day the money is due, for a variety of reasons that would not be of themselves criminal, to pay over the money; and yet the punishment attached to that would deprive him of the right to hold office forever hereafter! I suggest to members whether they mean to adopt a section having that in it, as broadly as it is there stated. It seems to me there ought to be some qualification to the word "delinquent."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Heverin.)

Mr. BIDDLE. I would say to my fellow delegate from the city, (Mr. Cassidy,) that the language is "accounted for." He might certainly account for it. He ought to do one or the other, either account or pay.

Mr. CASSIDY. But the substitute does not contain the term "accounted for."

Mr. BIDDLE. I agree with the gentleman if that is the case.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Heverin.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question is on the section.

Mr. DALLAS. It seems to me a little inconsistent that we should make provision in our Constitution that a man shall be ineligible to a municipal office who might still be elected to be Governor of the State of Pennsylvania. I move to

strike out the word "municipal" before the word "office," at the end of the second line.

Mr. MINOR. Many instances have occurred where a city officer has not accounted for or paid over money officially in his hands, without the slightest fault upon his part. It is often a matter of doubt, or purely a question of law whether he is accountable for certain funds, whether he is to pay over certain funds or not; and no man can tell until the courts have decided. I know an instance pending in court at this time, where the parties are acting in good faith, where a very valuable officer, under a doubt of the law, is waiting until he can know by instructions from the court what his duty is. It seems to me, therefore, that we are going too far to prescribe a penalty in such cases.

I suggest that if the Legislature is to regulate municipal affairs by general laws, if it is to prescribe the criminal code of this State in all other particulars from petty larceny to murder, can we not leave this for it to regulate also? You cannot pass this section without endangering the position of faithful officers who desire to act according to law.

Mr. CALVIN. I concur entirely in the remarks of the gentleman who has just sat down. It seems to me this section ought to be voted down.

The section was rejected.

The Clerk read the next section as follows:

SECTION 9. The Legislature shall not exempt any property, real or personal, within any city, from municipal taxation, except such as is exempted throughout the State by general law.

Mr. NILES. That is provided for in another place. ["Vote it down."]

The section was rejected.

The CLERK read the next section as follows:

SECTION 10. The select and common councils, or either of them, shall have power to appoint a committee of their bodies, or body, to investigate official misconduct, with power to subpoena witnesses, compel their attendance, examine them under oath, and require the production of books, papers, documents and vouchers, and in case of the neglect or refusal of a witness to appear, the court of common pleas of the county in which the city is, upon proof of the service of the subpoena, shall issue an attachment and compel the appearance. In case a witness shall appear but refuse to testify,

upon the same being brought before the court, it shall commit the witness for contempt, and impose such fine as in its discretion shall seem meet. If the charge is established and the finding is approved by the councils or council appointing the committee, then the office shall be declared vacated and the officer shall be ineligible to any office of trust or profit under the municipality and may be prosecuted in the criminal courts. Wilful false swearing before such committee shall be deemed perjury.

Mr. TEMPLE. I move to strike out the word "municipality," in the fourteenth line, and insert "under the laws of this Commonwealth." I think this is manifestly right. It seems to me not to be right to prevent a man from being elected to a municipal office when he can be elected to a State office, as my colleague (Mr. Dallas) suggested a while ago.

Mr. NILES. It seems to me that this is the merest act of Assembly and very poor at that, and I think that any delegate who turns his attention to it squarely will see that it ought not to go into the Constitution. It is but an act of Assembly merely, and questionable as to its propriety.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Temple.)

Mr. TEMPLE. If the section is to be adopted, this amendment ought to be made.

The amendment was rejected.

The PRESIDENT *pro tem*. The question is on the section.

Mr. TEMPLE. Now I call for a division of the section, the first division to end at the eighth line with the word "appearance."

Mr. SIMPSON. I make the point of order that if the House votes down the first branch, the rest of the section has nothing to hang upon.

Mr. TEMPLE. Then let it all go together, but I submit that a portion of this section should be adopted. If the same result can be obtained by moving to strike out all after the word "appearance" in the eighth line, I will make that motion.

The PRESIDENT *pro tem*. That amendment is in order, to strike out all after the word "appearance" in the eighth line.

Mr. TEMPLE. I submit that the first part of this section should be adopted. I do not think this is legislation. Delegates say, go to the Legislature for re-

lief, but we have been there for relief for a number of years and have not got it, and it is a fact that in the city of Philadelphia, no matter what offence is committed, if it comes under the control of the city councils, they have no authority to subpoena and compel the attendance of witnesses. This has given rise to a great deal of complaint. I simply rose to call the attention of the Convention to it, and if they desire to vote it down after that, they can do so.

Mr. HEVERIN. I hardly think the section rises even to the dignity of legislation, and I hope it will be voted down, either divided or as a whole.

Mr. CASSIDY. I want to call attention to another defect that strikes me in this section. That is, it authorizes either of the bodies to appoint a committee to investigate any official misconduct, not at all the official misconduct connected with their bodies or connected even with the municipal government, but "any official misconduct." Certainly, the Convention, I think, does not mean to do what the words import.

The PRESIDENT *pro tem*. The question is on the first division of the section.

The division was rejected.

The PRESIDENT *pro tem*. The question is on the second division of the section.

The division was rejected.

Mr. WORRELL. I move that the article be referred to the Committee on Revision and Adjustment, as it is gone now through with.

Mr. H. W. PALMER. I move to reconsider the vote by which the first section was passed. Having voted down almost everything in the article, I hope we shall vote that down, too. It has no place here now. Therefore, I move to reconsider the vote by which it was passed.

Mr. TEMPLE. I second the motion. I voted in the affirmative.

Mr. H. W. PALMER. I would rather leave the whole subject of providing for the erection of cities to the Legislature. I move to reconsider the vote adopting the first section.

The PRESIDENT *pro tem*. It is moved and seconded to reconsider the vote by which the first section was agreed to.

The motion was not agreed to, less than a majority of a quorum voting therefor.

Mr. LITTLETON. I desire to call attention to an ambiguity of expression in the first section. ["Too late."]

The PRESIDENT *pro tem*. It is not before the Convention.

Mr. STANTON. I move that the article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

Mr. STANTON. I move that we now adjourn.

LEAVE OF ABSENCE.

Mr. BAER. Before that motion is put,

I desire to ask leave of absence for myself for Monday.

Leave was granted.

Mr. STANTON. I move an adjournment.

The motion was agreed to, and (at twelve o'clock and seventeen minutes P. M.) the Convention adjourned until ten o'clock A. M. on Monday.

ONE HUNDRED AND THIRTY-FIRST DAY.

MONDAY, June 30, 1873.

The Convention met at ten o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. Jas. W. Curry.

The Journal of the proceedings of Saturday was read and approved.

LEAVES OF ABSENCE.

Mr. HAY asked and obtained further leave of absence for Mr. Wm. H. Smith for a few days from to-day.

Mr. H. W. PALMER asked and obtained leave of absence for Mr. Turrell for a few days from to-day.

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

INVITATION FROM LEHIGH UNIVERSITY.

Mr. BRODHEAD presented the following communication, which was read :

BETHLEHEM, June 26, 1873.

To the Hon. Jno. H. Walker, President *pro tem.* Constitutional Convention.

DEAR SIR:—By unanimous vote of the Board of Trustees of the Lehigh University, the free use of Packer hall was this day tendered for the use of the Pennsylvania Constitutional Convention should they determine to meet at Bethlehem. Packer hall has three rooms, each eighty by forty feet, any one of which would accommodate the Convention; besides a large number of smaller rooms which could be used for committee rooms.

By order of the Board of Trustees.

E. P. WILBUR,
Secretary.

Mr. ALRICKS. I move that the communication be laid upon the table, with the thanks of the convention.

The motion was agreed to.

PROPOSED MEETING AT HARRISBURG.

Mr. ALRICKS. I offer the following resolution, and I ask that it lie on the table for the present :

Resolved, That when the Convention adjourns on Thursday next it will be to meet in the hall of the House of Repre-

sentatives at Harrisburg on the eighth of July next, at eleven o'clock A. M.

The PRESIDENT *pro tem.* The resolution will lie on the table.

THE JUDICIAL SYSTEM.

Mr. ARMSTRONG. I move that the Convention do now proceed to the second reading and consideration of the article on the judiciary.

The motion was agreed to, and the Convention proceeded to consider on second reading the article on the judiciary, as reported from the committee of the whole.

The CLERK read the first section as follows :

SECTION 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, in courts of oyer and terminer and general jail delivery, in courts of quarter sessions of the peace, in orphans' courts, in justices of the peace, and in such other courts as the Legislature may, from time to time, establish.

Mr. TEMPLE. I move to strike out all after the word "peace," where it occurs the second time, in the fourth line, the words to be stricken out being : "And in such other courts as the Legislature may, from time to time, establish."

Mr. ARMSTRONG. Mr. President : As the article stands now, I think it would not be judicious to strike that provision out. When the article was reported from the Committee on the Judiciary the provision was not in; but we had then made some provision for the relief of the Supreme Court. I do not intend to renew that proposition. It has been fairly considered and voted upon by the Convention, and I do not think it wise to attempt to urge the matter on them again, when it has already received their full consideration. As we have thus far given no relief whatever to the Supreme Court, we ought not to deprive the Legislature of the power of doing it hereafter, should the future emergencies of the State require.

Mr. TEMPLE. I made this motion in the absence of another delegate who would have made it if he had been here.

He would then have given his reasons for making this motion. My reason for making it is simply this: It will be perceived that under the power conferred by these words the Legislature may hereafter paralyze the constitutional courts. It has been done in one of the counties of this Commonwealth where a district court has been established, as I was informed by a delegate from Schuylkill, absolutely taking away nearly all the jurisdiction of the court of oyer and terminer; in other words, leaving the criminal jurisdiction of the constitutional court in such a shape that it can only be exercised about one week in the year, giving to another Court created by the Legislature almost the entire jurisdiction of the court of oyer and terminer. That delegate is not here. I know he was interested in having this clause stricken out. For that reason I have made the motion, and I have no doubt if it is not agreed to he will move a reconsideration when he comes in.

Mr. CORBETT. My recollection is that in some other section we have adopted on second reading a provision that is directly in conflict with these words. I cannot turn now to the section, but that is my recollection; and one or other of the provisions ought to be stricken out. These words should be stricken out: "And in such other courts as the Legislature may from time to time prescribe," for my recollection is that on second reading we adopted a provision in conflict with the clause, but I cannot refer to it now.

Mr. ARMSTRONG. We prohibited the Legislature from creating any court to be presided over by any of the judges of the Supreme Court; that is all. I will remark that the section now pending is the same as the present Constitution, leaving out the register's court, which the Convention has determined to abolish.

The PRESIDENT *pro tem*. The question is on the amendment offered by the gentleman from Philadelphia (Mr. Temple.) The amendment was rejected.

Mr. WOODWARD. I move to amend the section by adding the following:

"And all the judges of said courts shall be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate."

Mr. President, I do not propose to say one word on the subject of this amendment, but merely to ask for the yeas and nays upon it. I wish to put myself on the record in this matter.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. BROOMALL. Before the yeas and nays are ordered, I simply desire to say that I would vote for this amendment with pleasure if the term of the judges was "during good behavior;" but it being for a limited term of years, I am opposed to the amendment, preferring that they should be dependent upon the people who elect them rather than upon the politicians at Harrisburg.

Mr. BIDDLE. I desire to say but a word, partly in the same direction. I am for an appointive judiciary and for a good behavior tenure. If I cannot get both, I will go for either, and therefore I shall go for the amendment.

Mr. TEMPLE. I desire to say that my reasons for voting against this amendment are similar to those offered by the gentleman from Delaware (Mr. Broomall.)

Mr. KAINE. I merely desire to say that I am opposed to the appointment of the judges under any circumstances, and opposed to a life tenure and in favor of a short term; and when we come to consider the next section I intend to move to strike out "twenty-one" and insert "fifteen," so as to make the term fifteen years.

Mr. LILLY. I am very glad that the gentleman from Philadelphia has offered this amendment to give us a chance to put our names on the record on this subject. I am heartily in favor of the appointive system. I do not believe that you can maintain the purity of the judiciary for the next twenty-five years in any other way. In my opinion, the judiciary, under the elective system, has been going down hill very rapidly, but I believe by now adopting the appointive system we may again bring it up to what it should be.

Mr. ALRICKS. I merely wish to say this: Where the judiciary are elected, the Convention will see very well that if there is a member of the bar who holds the judicial district in his hand politically, he will be very apt to hold the conscience of the judge in his other hand. But, sir, since I have come to this city, I am thoroughly persuaded that the influence of corporations would be so powerful that if the Governor had the appointment of the judges we might expect those appointments to be made by the corporations. I have therefore changed my views on the subject and shall vote

against this amendment and in favor of the election of the judges.

Mr. BEEBE. Mr. President: Judging of the future by the past, believing that experience has demonstrated that we have a better judiciary under the elective than under the appointive system, I shall vote against this amendment.

Mr. ARMSTRONG. As this amendment is offered confessedly for the purpose of enabling gentlemen to put themselves on the record, I desire to state that I should favor an amendment which made the judges of the Supreme Court appointive by and with the consent of two-thirds of the Senate; but as this amendment proposes to make the entire judiciary of the State appointive, I am compelled to vote against it.

Mr. HAY. I desire simply to say that under all the circumstances at the present time in our Commonwealth; I am in favor of an elective judiciary, with a tenure for good behavior or for life.

The PRESIDENT *pro tem*. The Clerk will call the roll on the amendment.

Mr. KNIGHT. Let it be read.

The CLERK. It is proposed to add: "And all the judges of said courts shall be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate."

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Bailey, (Huntingdon,) Barclay, Biddle, Bullitt, Church, Curtin, Finney, Guthrie, Hall, Hemphill, Hunsicker, Lilly, Mann, Palmer, G. W., Russell, Temple, Wetherill, Jno. Price and Woodward—18.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Beebe, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Calvin, Campbell, Carey, Cassidy, Corbett, Corson, Cronmiller, Curry, Dallas, Darlington, DeFrance, Dodd, Edwards, Elliott, Fulton, Hay, Hazzard, Horton, Kaine, Knight, Landis, Lawrence, Littleton, MacConnell, McClean, Minor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Sharpe, Simpson, Struthers, Walker, Wherry, Worrell and Wright—54.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Eaker, Bannan, Bardsley,

Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dunning, Ellis, Ewing, Fell, Funck, Gibson, Gilpin, Green, Hanna, Harvey, Heverin, Howard, Lamberton, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Patton, Porter, Pughe, Purviance, John N., Ross, Runk, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Meredith, *President*—61.

Mr. RUSSELL. I move to amend the section by transposing it so as to make it read just as the section in the old Constitution reads. I move to transpose the words "in courts of common pleas," and insert them after the word "delivery," in the third line, and to strike out in the fourth line the words "orphans' courts," and insert the same words after "common pleas" in the third line; and in the fourth line to insert the words "for each county," so as to make the section read:

"The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of oyer and terminer and general jail delivery; in a court of common pleas, an orphans' court, a court of quarter sessions of the peace for each county; in justices of the peace; and in such other courts as the Legislature may from time to time establish."

That makes the section read exactly as it is in the old Constitution, with the exception of leaving out what the Convention has decided should be left out, "in a register's court." I think it will be better to adopt the arrangement of the old Constitution, because everybody understands that. I do not propose to strike out anything that is now in the section, but merely to change its phraseology so as to conform to the old Constitution.

Mr. ARMSTRONG. There is no material difference between the proposition of the gentleman from Bedford and the proposition as it now stands reported from the Committee on the Judiciary. The committee changed the phraseology of the existing Constitution because they thought it would be an improvement in some respects. There is no necessity for authorizing a court of common pleas in each county. They are courts of the Commonwealth. The whole idea of the change of phraseology is that the Supreme Court and court of common pleas are brought

into closer juxtaposition as the report now stands. There is nothing material gained by the amendment, and I see no necessity for changing the phraseology already agreed upon.

Mr. RUSSELL. I do not think we ought to make any change in the language of the old Constitution unless there is a necessity for it. As the old Constitution stands, it provides that these courts shall be for each county, and we have decisions in regard to that matter. Therefore I think we had better, where we do not change the old Constitution except by striking out the register's court, retain the language of the Constitution.

The amendment was rejected.

Mr. KAINE. I understand now that the vote is upon the amendment of the gentleman from Bedford.

The PRESIDENT *pro tem.* That has just been voted down.

Mr. KAINE. Then what is the question before the Convention, sir?

The PRESIDENT *pro tem.* The section is before the Convention.

Mr. KAINE. I hope that the President has not decided that the amendment of the gentleman from Bedford was voted down.

Mr. BIDDLE. We have voted that down.

The PRESIDENT *pro tem.* I will withdraw the decision and allow the vote to be taken over again, or allow the gentleman from Fayette to discuss it.

MANY DELEGATES. No. No.

Mr. TEMPLE. Leave it to the Committee on Revision and Adjustment.

Mr. KAINE. I insist upon it that we are going to leave too much entirely to the Committee on Revision and Adjustment. There is certainly very great propriety in the amendment offered by the gentleman from Bedford.

Mr. H. W. PALMER. But that amendment has been voted down.

Mr. KAINE. We should keep in mind the old Constitution as nearly as we can.

The PRESIDENT *pro tem.* Does the gentleman from Fayette move to reconsider the vote by which the amendment was lost?

Mr. KAINE. I understood the President to withdraw his decision.

The PRESIDENT *pro tem.* I could not withdraw my decision under the objections that were made all over the House.

Mr. DALLAS. I move to amend by inserting after the words "orphans' court,"

in the fourth line, the words "district courts."

On the question of agreeing to the amendment, a division was called for, which resulted fifteen in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The PRESIDENT *pro tem.* The question recurs upon the first section.

The section was agreed to.

The PRESIDENT *pro tem.* The second section will be read.

The CLERK read as follows:

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 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. ARMSTRONG. I move to amend the section by striking out in the first and second lines the words "who shall be elected by the qualified voters of the State at large," and by adding at the end of the section the following:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years if they shall so long behave themselves well. All of whom shall be commissioned by the Governor; but for any reasonable cause which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature."

Mr. ARMSTRONG. The first and second lines I have moved to strike out, because the matter will be better provided for in the sixteenth section, which I shall also move to amend at the proper time, by inserting a part of what is now the second section of the judiciary article of the present Constitution. The amendment which I have here moved to insert at the end of the section, is a part of the second section of the judiciary article of the Constitution as it now is. It was provided for in another part of the report, but not so fully

nor I think as concisely as it is here; and I think this will be an improvement.

I will state here that the second section of the fifth article of the present Constitution being adopted by itself, necessarily embraces the entire subject and embraces subjects which the Committee of the Judiciary thought proper to divide for the purpose of giving it a better arrangement; but all that is in the second section is fully embodied in the report that is now under consideration. Every part of it except only from the twenty-fourth to the thirty-third line of the re-print of the present Constitution, which should be more properly referred, and which was by the committee of the whole referred to the Committee on Schedule. With that exception every part of the second section of the fifth article of the present Constitution is embodied in this report.

Mr. S. A. PURVIANCE. I would suggest to the chairman of the Committee on the Judiciary that in my judgment, he will facilitate the business of this Convention if he will allow us to take distinct votes upon the several distinct propositions embraced in the report as made by him, namely: In the first instance, upon the question of how many supreme judges we ought to have; secondly, as to what shall be the length of their tenure; and third, as to whether they shall be ineligible or not. If the committee was to vote directly upon these three propositions which are embraced in this second section, which relates to the Supreme Court, it will be much more in order and will facilitate our business greatly.

Mr. ARMSTRONG. The amendment which I have proposed does not in the least interfere with the suggestions of the gentleman from Allegheny. All the distinct propositions named by him can be voted upon after a vote has been had on my amendment. Those questions will come up in their regular order on another section. As has been intimated by the gentleman from Fayette, (Mr. Kaine,) he will propose to strike out the word "twenty-one," which will raise the question of tenure. The gentleman from Allegheny proposes to strike out the word "seven" to raise the question of the number of judges, and there is no reason therefore why the amendment which I have offered should not be voted upon at this time. The section will then come up for decision in the manner suggested by the gentleman from Allegheny, and I think in more proper order.

Mr. KAINE. I concur entirely with the gentleman from Allegheny in proposing that we follow up as nearly as we can the line of the report that is now before us. The amendment, as I understand it, offered by the gentleman from Lycoming, is putting the courts of common pleas into this section in place of leaving them in a section by themselves. I much prefer to have the Supreme Court in a section by itself, or in two sections; and then follow that up by the court of common pleas, also standing alone. I hope we shall follow as nearly as we can the line of the report.

Mr. MACCONNELL. If I heard the amendment offered by the gentleman from Lycoming correctly, it consists of two parts, one to strike out and the other to insert. I would call for a division, in order to take the vote separately, first upon the part striking out, and then on the part to insert.

Mr. ARMSTRONG. My amendment is not in any parliamentary sense a motion to strike out and insert. It is a motion to strike out one certain phrase in the section, and to add in another place the amendment which I have submitted. However, I have no objection to taking the vote separately on the first amendment.

The PRESIDENT *pro tem*. The amendment of the delegate from Lycoming will be read.

The CLERK. The first amendment is to strike out the words "who shall be elected by the qualified voters of the State at large."

Mr. ARMSTRONG. That, as I have stated, is only for the purpose of inserting it in a more appropriate place.

The CLERK. Then at the end of the section it is proposed to add:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. All of whom shall be commissioned by the Governor; but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature.

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

The PRESIDENT *pro tem*. A division is asked, the first division to end with the words proposed to be stricken out.

Mr. CORSON. Why are associate judges here?

Mr. ARMSTRONG. Associate judges are here because they are not stricken out.

Mr. CORSON. I understood that we had agreed to dispense with associate judges unlearned in the law.

Mr. ARMSTRONG. I was not in the Convention at the time that vote was taken, but I understood that the sense of the Convention was to retain the associate judges.

Mr. CORSON. On the contrary the sentiment of the Convention was very decidedly in favor of striking them out.

Mr. ARMSTRONG. That can be raised as a separate question.

The PRESIDENT *pro tem*. A division of the question is asked; the first division is the words to be stricken out, and the second the amendment proposed to be added at the end of the section. The question is on the first division of the amendment of the gentleman from Lycoming, being the motion to strike out.

The first division was rejected.

The PRESIDENT *pro tem*. The question now is on the second division of the amendment.

Mr. ARMSTRONG. I think there must be some misapprehension about the vote referred to.

The PRESIDENT *pro tem*. No; the proposition for associate judges was voted down distinctly.

Mr. ARMSTRONG. I wish to call the attention of the committee to this fact, that in the fourteenth section I shall move to insert a part of the second section:

"The judges of the Supreme Court and the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors of the Commonwealth in the manner following, to wit: Judges of the Supreme Court by the qualified electors of the Commonwealth at large; president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, by the qualified electors of the respective districts over which they are to preside or act as judges; and the associate judges of

the courts of common pleas by the qualified electors of the counties respectively."

It is the first clause of the second article of the present Constitution, which I will propose to offer as an amendment to the fourteenth section.

The PRESIDENT *pro tem*. The question now pending is on the second division of the amendment of the delegate from Lycoming to the second section, which will be read.

The CLERK. The second division is to add at the end of the section:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well. The associate judges of the court of common pleas shall hold their offices for the term of five years if they shall so long behave themselves well. All of whom shall be commissioned by the Governor; but for any reasonable cause which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature."

Mr. CORSON. I ask for a further division of the question, so as to take the vote on all of it down to where it commences with associate justices.

The PRESIDENT *pro tem*. It is susceptible of that division. The next division will be read.

The CLERK read as follows:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well."

Mr. BEEBE. Before the vote is taken on that division, I wish to call the attention of the Convention, and of the chairman of the Committee on the Judiciary to section twenty-four, the last clause:

"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. CORBETT. I call the attention of the chairman of the Judiciary Committee to the fact that it is provided by this division that all judges learned in the law

are to hold their office for the term of ten years. We have provided for a minor judiciary in Philadelphia, if my recollection is correct, for the term of seven years. The division as drafted here certainly would apply to those judges, so that the two sections would conflict.

Mr. ARMSTRONG. I withdraw the amendment, inasmuch as the first division was voted down.

The PRESIDENT *pro tem*. The amendment is withdrawn.

Mr. DARLINGTON. I move to amend the section by inserting in the first line after the first word, "the," the words "judges of the," and to strike out the words "shall consist of seven judges who" in the same line. It will then read :

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

My object in offering this amendment is to present to the Convention the question whether we ought or ought not in the Constitution to prescribe the number of judges of the Supreme Court for all time to come. I know the prevailing sentiment is that the present number of the Supreme Court judges is not sufficient. I know the prevailing sentiment is that there ought to be two others added. I know also that this sentiment is not shared in by the judges of the Supreme Court themselves, for I have heard more than one of them express it. Their labors will not be materially aided by an increase of numbers. But apart from that, my great objection is to fixing irrevocably in the Constitution a number for the judges of the Supreme Court which may not be satisfactory for a single year. It may be, before this Constitution is required to be changed, that more than seven judges will be needed, or less than seven judges will be all that will be needed.

Now, I think it unwise to fix in the Constitution the number. Leave that to the Legislature flexible, to be increased or diminished as the circumstances of the State shall seem to require. We never have heretofore increased or fixed the number in the Constitution. We have always left it to be provided by the Legislatures according to the necessities of the people, and I think it is wisest to leave it so still. It is therefore that I move the amendment to leave that open.

Mr. ARMSTRONG. I do not think it wise to leave this thing open to the exclusive discretion of the Legislature. Suppose they should make the number ten? The

section is as well as it is, and it is in accordance with the practice of other States in fixing the number of their judges. The number of seven was very fully discussed in committee of the whole, and the reasons for it I think are very strong. It does not give the Supreme Court additional time for hearing except to the extent that as the judges will be less engaged in writing, they will have more time. It will to some extent help them in hearing causes, and very greatly help them in writing opinions.

Mr. BROOMALL. There is one convenience in leaving this matter with the Legislature, and that is this: If the Supreme Court and the Legislature should be of opposite parties, and the Supreme Court should decide wrong in the estimation of the Legislature upon a political question, the Legislature could add a dozen judges, and so get rid of the obnoxious decision. [Laughter.] I do not think I shall vote for the amendment.

Mr. DARLINGTON. I do not look to any such contingency as that in the view I have. I suppose it possible that in our efforts to relieve the Supreme Court, we may find it necessary to follow out the line of some gentlemen and divide the court, have one Supreme Court sitting in Philadelphia and another in Pittsburg, and have them to come together in Harrisburg and compare notes, and if so, seven judges would not be enough; we might require more.

The PRESIDENT *pro tem*. The question is on the amendment proposed by the delegate from Chester (Mr. Darlington.)

The amendment was rejected.

Mr. LITTLETON. I move to amend in the second line by striking out the words "elected by the qualified voters of the State at large," and inserting "appointed by the Governor, by and with the advice and consent of the Senate."

SEVERAL DELEGATES. That question has just been voted upon.

Mr. LITTLETON. The amendment voted upon relates to all the judges, while the amendment that I now offer relates to the judges of the Supreme Court. I myself voted against the other amendment because it applied to all the judges.

Mr. ARMSTRONG. I suggest to the gentleman to say "two-thirds of the Senate."

Mr. LITTLETON. At the suggestion of the gentleman from Lycoming, and with the consent of the Convention, I will modify my amendment so as to make the words proposed to be inserted read: "Ap-

pointed by the Governor by and with the advice and consent of two-thirds of the Senate."

Mr. TEMPLE. I move further to amend by adding at the end of the section as it will then read, that the judges shall hold their office during good behavior.

Mr. BIDDLE. Do not complicate the question; that is a separate matter.

Mr. TEMPLE. Very well; I withdraw my amendment.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from the city (Mr. Littleton.)

Mr. TEMPLE. I ask for the yeas and nays.

Mr. CORSON. We have had the yeas and nays on this question, and I trust we shall not take up time by the unnecessary calling of the roll.

Mr. TEMPLE. I withdraw the call for the yeas and nays, and ask for a division.

The amendment was rejected, the ayes being twenty-one—less than a majority of a quorum.

Mr. KAINE. I now move to amend the section by striking out the words "twenty-one" in the third line and inserting the word "fifteen," so that it will read: "Shall hold their office for the term of fifteen years."

Mr. BROOMALL. I move to amend the amendment by inserting the words "for life," and striking out the words "so long as they shall behave themselves well, but shall not be eligible to re-election."

Mr. KAINE. I believe I have the floor.

Mr. BROOMALL. Well, I move to amend your amendment.

Mr. KAINE. But you have no right to move to amend while I am on the floor.

The PRESIDENT *pro tem*. The delegate from Fayette (Mr. Kaine) is entitled to the floor.

Mr. KAINE. I hope the gentleman will retain his amendment until we can get a vote upon this single solitary proposition.

Mr. BROOMALL. Go ahead then; let us have it.

Mr. KAINE. Mr. President: These are very important propositions, as I think every gentleman in this Convention must admit, and let us have a fair, square expression of opinion upon them. Do not complicate them by side-issues and frivolous amendments.

I am in favor of standing by the provisions of the old Constitution as nearly as we can, and I think, as has been said before in debate in committee of the

whole on this question, that the system adopted by the Convention of 1837-8, as amended by the amendments of 1850, was a wise one. The Convention of 1837-8 fixed the terms of the judges of the Supreme Court at fifteen years; of the law judges of the courts of common pleas at ten years; and the associate judges, if they are to be retained in this Constitution, for five years. I think that was a wise provision, and in 1850 I was opposed to any change; I was then opposed to the election of the judges. I thought the appointment by the Governor and the confirmation by the Senate was perhaps the best system that could be devised. But after an experience of twenty years in the election of judges, I think the system has worked very well, and I am satisfied that the people would not be willing to go back to the system of appointment. Therefore I am willing to stand by the amendment of 1850 and elect the judges of the Supreme Court and all others by the people, but for a limited term—and therefore I infinitely prefer fifteen years to twenty-one. Hence I have moved the amendment, and I hope it will be adopted by the Convention. I call for the yeas and nays upon it.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. ARMSTRONG. I do not desire to debate this question. It has been already fully debated, and we have had the deliberate action of the Convention upon it.

The question being taken by yeas and nays, resulted: Yeas thirty-five, nays forty-two, as follows:

Y E A S .

Messrs. Achenbach, Beebe, Black, Chas. A., Bowinan, Bullitt, Campbell, Corbett, Corson, Cronmiller, Curtin, Darlington, Edwards, Elliott, Fulton, Hall, Hanna, Hunsicker, Kaine, Knight, Lawrence, Lear, Littleton, MacConnell, McClean, Niles, Palmer, G. W., Palmer, H. W., Patton, Purman, Purviance, Samuel A., Rooke, Smith, H. G., Wherry, Woodward and Worrell—35.

N A Y S .

Messrs. Alricks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Brodhead, Broomall, Brown, Calvin, Carey, Cassidy, Church, Curry, Dallas, De France, Ewing, Fell, Finney, Guthrie, Hay, Hemphill, Horton, Landis, Lilly, MacVeagh, Mann, Minor, Mitchell, Mott, Patterson, T. H. B., Read, John R., Reed, Andrew, Reynolds, Russell, Sharpe,

Simpson, Stanton, Struthers, Temple, Walker, Wetherill, John Price, and Wright—42.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dodd, Dunning, Ellis, Funck, Gibson, Gilpin, Green, Harvey, Hazzard, Heverin, Howard, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Porter, Pughe, Purviance, Jno. N., Ross, Runk, Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F., and Merodith, President—56

MR. HEMPHILL. I move to amend by striking out after the word "well" in the fourth line, the words "but shall not be eligible to re-election," and inserting: "And shall be ineligible for any other office of trust, honor, or profit during said term."

The amendment was rejected.

MR. DARLINGTON. I propose to amend by striking out the words "to re-election" and inserting "re" before "eligible;" so as to read "shall not be re-eligible."

MR. BROOMALL. I would suggest to my colleague that instead of the word "re-eligible," which is a little awkward, he put in the word "re-elected." That is good English.

MR. DARLINGTON. I accept the modification.

MR. ARMSTRONG. I think the section is in the best phraseology now.

THE PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Chester, (Mr. Darlington,) as modified.

The amendment was rejected.

THE PRESIDENT *pro tem*. The question recurs on the section.

MR. STRUTHERS. I propose to amend in the fourth line by inserting after the word "re-election" the words "after having arrived at the age of sixty-five years."

It appears to me that there is no great propriety in saying that a judge shall go off the bench when he arrives at fifty or sixty years of age, when he has perhaps become the most important and useful member of the bench. If he goes on at thirty years, a term of twenty-one years brings him to fifty-one, and I see no reason why he might not be re-elected; but if he has

been elected at a time of life that would bring him to sixty-five years, then I could see a propriety in saying that he should not be re-elected. If he should be elected at such a time that his term terminates before he is of the age of sixty-five, I see no good reason why he might not be re-elected, because many judges have lived to a green old age, up to eighty, and been of good service upon the bench.

MR. WOODWARD. I wish the gentleman had stated whether we have had an instance of a judge going on our Supreme bench before he was fifty years of age. I do not remember any. If the rule be that judges do not reach the Supreme bench before they are fifty years of age, and then the Convention insists on keeping them in office twenty-one years, which is the tenor of the last vote, you have got seventy-one years for all your Supreme judges at the end of their terms. What is the necessity of the gentleman's amendment in view of that state of facts? Instead of a judge going off that bench at fifty, I do not know of any judge who went on it before fifty, and now you are going to add twenty-one years to his life before he leaves the bench.

MR. STRUTHERS. I understand that one of our present supreme judges, Judge Williams, was only forty-five or forty-six years old when he went on the Supreme bench; and I know of no reason why gentlemen may not be elected to that office at thirty years of age. There is nothing in the Constitution to prohibit it that I know of.

* MR. ARMSTRONG. I call the gentleman's attention to the fact that in the eighteenth section of this article it is provided that men shall not be eligible to the bench of the Supreme Court unless they be at least forty years of age.

MR. HAY. I simply desire to state, after what the gentleman from Philadelphia (Mr. Woodward) has said, that I am not at all in sympathy with any proposition which would provide that persons otherwise competent should not go upon the bench of any court at any particular age. I do know the fact—the occurrence did not happen in this State but in another and neighboring State whose judiciary occupies a very high position—where a gentleman was placed upon the Supreme bench and served there very creditably, from the age of twenty-nine years.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Warren (Mr. Struthers.)

The amendment was rejected.

Mr. S. A. PURVIANCE. Mr. President: For the purpose of raising the question, inasmuch as I understand that some judges of the Supreme Court say they do not need any increase, I move to strike out of the first line the word "seven," and to insert "five."

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

The section was agreed to.

The third section was read as follows :

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.

Mr. KANE. I move to amend the section in the fourth line by inserting after the word "of" where it first occurs, the words "injunction where a corporation is a party," and to strike out the second "of" in the same line, so as to read :

"They shall have original jurisdiction in cases of injunction where a corporation is a party, *habeas corpus* and *mandamus*."

I hold that the jurisdiction of the Supreme Court in cases of injunction where corporations are parties, is as important and more important than any other item in this section over which their jurisdiction is retained. Where we are having so many railroads and so many important and intricate questions arising, almost daily and monthly, where railroad companies are parties whose roads extend from one end of the State to the other, going through fifteen or twenty counties, I hold it to be of the greatest importance that the Supreme Court should have jurisdiction. I conversed with two of the judges of the Supreme Court on this subject, and they both concurred in the opinion that this power should be retained to them. Questions of right, questions of property, questions of damages where a corporation may be trespassing perhaps in two or

three different counties, are presented where the court of common pleas of the county in which it would be proper, unless this provision is inserted here, to commence a proceeding of that kind, may not be in session, and may not be in session for three months; all the injury may be done in the meantime; and there is no remedy and no redress. Judges of the Supreme Court at chambers in Philadelphia issue a preliminary injunction to any part of the State. It is a question that has been much considered and much discussed by the legal minds of this Commonwealth and by the court itself, and I think it will strike the mind of every gentleman upon this floor that a power of that kind, where a summary remedy is required, should be retained in the highest court of the Commonwealth. I hope the amendment will prevail.

Mr. MACVEAGH. I confess, Mr. President, that it seems to me this power ought to be preserved to the Supreme Court, and that questions of such gravity arise in connection with these corporations that it is very difficult to get them before the court of the proper county. Take the matter of holding a corporate election, or voting upon improper stock. That may be done in one place or in another in the State. Take the matter of one corporation endeavoring to seize the railroad of another that may extend over three or four counties. The judge of the county may be interested, or he may be absent. Many cases can occur in which you cannot have an order from him; and it might be very difficult sometimes to know in what county to bring the action. It seems to me the danger of destroying this jurisdiction is very much greater than the danger of allowing it to remain in the Supreme Court.

Mr. DAWLINGTON. There is a provision in the present Constitution which seems to me to meet the difficulty :

"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," &c.

"The Legislature shall vest in the said courts such powers to grant relief in equity as shall be found necessary, and may from time to time engage or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice."

This paragraph seems to have been omitted by the committee in their report; I do not find it, at least.

Mr. ARMSTRONG. No sir, it is in. A part of the phraseology of that section was not applicable to our present provision, but it is in another form.

Mr. DARLINGTON. This would be a very proper power to retain, undoubtedly—chancery power in the Supreme Court to such an extent as the Legislature shall see fit to confer it—which would cover all matters to which reference has been made by the gentleman from Dauphin.

Mr. WOODWARD. It provides negatively that they shall have no other jurisdiction than is here specified.

Mr. DARLINGTON. It does not say so.

Mr. BIDDLE. At the end it does.

Mr. DARLINGTON. The provision of the old Constitution does not provide negatively. It is: "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."

Mr. WOODWARD. I want to call the attention of the gentleman from Chester to the words "but shall not exercise any other original jurisdiction" in the section before us. This section prohibits the exercise of any other jurisdiction than that which is enumerated. If it be important to put in the provision which the gentleman from Fayette has offered, and I think it is, it ought to be done expressly.

Mr. BIDDLE. I merely wish to give one additional reason in favor of this amendment. It is very often vital to the interests of a large portion of the community (to a county for instance) to have a question determined by the granting of an injunction. If the local judge refuses an injunction, they will be remediless for a long period of time, and driven to a long delay and an action at law, whereas if the question is heard in the first instance by a court in banc, as this amendment contemplates, the controversy can be determined in the first instance in a rapid and inexpensive mode.

Mr. ARMSTRONG. I am satisfied that this amendment is judicious, and I hope it will be adopted.

Mr. MACCONNELL. I rise to make a suggestion to the gentleman from Fayette, whether it would not be advisable to give the Supreme Court jurisdiction in cases of mortgages of corporations. For

example, railroad mortgages often extend from one end of the State to the other, and it has been found necessary to give the Supreme Court jurisdiction in such cases. I suggest whether it would not be better to retain it here.

Mr. S. A. PURVIANCE. I do not desire to see this amendment carried upon the mere assent of the chairman of the Judiciary Committee. I rise to enter my protest against any such original powers being conferred on the Supreme Court. We have heard complaints here from time to time that the Supreme Court is behind in its business, and allow me to say that in Allegheny county the *remanets* there, about forty or fifty every year, are mainly occasioned from the fact that the Supreme Court is listening to too many injunctions, to too many applications of that nature. Why cannot the courts of common pleas attend to this matter? Why cannot they have jurisdiction? Why cannot they dispose of these applications just as well as the Supreme Court? If you strip the Supreme Court of the jurisdiction which has hitherto been conferred upon them, my word for it five efficient judges upon that bench will be able to transact all the business that can be brought before them, in a satisfactory manner. I therefore hope this proposition of the gentleman from Fayette will not prevail.

Mr. CORBETT. I hope that this amendment will not prevail. I do not see any reason why we should give a remedy to a corporation that is not given to a private citizen. Besides this, I might say that I have no doubt that if all the suitors of the State could commence their suits in the Supreme Court, they would be advantaged where the amount is sufficient to justify them. But if we are going to relieve the Supreme Court of the great pressure of its business, which has been so seriously complained of upon this floor, we must wipe away the original jurisdiction. There is no reason whatever for giving that court jurisdiction in these cases. The Legislature can provide for cases where judges are interested, and the remedy now is full and plenary. You can file your bill, and it is not necessary that the court should be in session. You can by giving proper notice get your case to a judge in chambers for an interlocutory or preliminary injunction. Not only that, but there is, by an act of Assembly, now provided a plan for an appeal from a decision on an application for an interlocutory injunction in Pennsylvania. You

are allowed to take it up to test the correctness of the decision of the court below.

My friend from Allegheny has well appealed to this Convention not to load down the judges of the Supreme Court with the burden of these cases. I can say to this Convention that in western Pennsylvania a large portion of the term of the Supreme Court is taken up by cases referred to it, certified from and coming there from the eastern portion of the State, and ordered to be there re-argued. I have been in attendance upon that court several times when the attorneys of the western district were in the court ready to argue their writs of error, but were delayed for days and days in the transaction of the legitimate business of that district, by these cases which had been certified for re-argument from the eastern section of the State.

I hope this amendment will not prevail. There is no reason why these parties cannot seek relief in the court of common pleas, and take the regular channel to get justice.

Mr. CORSON. I move to strike out the words, "where a corporation is a party." That leaves the word "injunction" in the amendment, and the section, if so amended, will read, "So that the Supreme Court shall have original jurisdiction in case of injunction, *habens corpus*," &c.

I see no reason why corporations should be preferred in this matter. I understood the amendment was proposed to reach corporations as defendants, but it give them as advantage over the people generally, as complainants, and they have no right to that preference over the people of Pennsylvania. We are willing to vote for the word "injunction," and if we carry that we will vote the word "corporations" down.

Mr. ARMSTRONG. The Supreme Court have been relieved of their general equity jurisdiction, and the Legislature are forbidden from restoring it. The reason why it would be judicious to insert this amendment is that it applies only to corporations. These corporations have powers to be exercised in various counties, sometimes in many counties extending over the jurisdiction of a number of common pleas courts, and hence there may be conflicting opinions upon the same question if it be left for decision to the courts of common pleas. It might so happen at times that the power of injunction should be exercised promptly,

and if we require that the question shall first be determined in the common pleas of the several counties, the whole efficiency of the remedy might be lost. I believe therefore that the amendment is a judicious one.

Mr. MANN. I hope that the amendment to the amendment will not prevail. It is a wiping out of this section as it was passed and reported from the committee of the whole. It is to restore to the Supreme Court a very large amount of original jurisdiction which this Convention had deemed it wise to withhold from it. It is to establish a favoritism in the practice of law in Pennsylvania. It is to give certain favored localities advantages which should belong to the State alone, and I hope there will be no such favoritism endorsed by this Convention.

We have heard it constantly stated upon this floor, whenever the business of the Supreme Court has been under discussion, that that Court is overburdened and that we must furnish it some relief. Well, sir, the delegates preparing this section of the article on the judiciary did furnish this relief, and the section was allowed to pass as it is now printed on our desks, in order that the Supreme Court might be relieved of some of the burden that has hitherto been upon them. We know that there has been a great mass of business imposed upon them heretofore without any excuse or any necessity for its being done. Let them now sit as a court of revision to revise the decisions and proceedings of the courts below; and if that is done there will be no difficulty in their disposing promptly of all business which shall come before them. But now allow this section to be amended as it is here attempted to be, and we shall force upon the Supreme Court original jurisdiction which will create the same difficulty we have had heretofore in reference to the Supreme Court finding time to attend to its legitimate business. The great mass of business from the State at large, the revision of the decisions of the courts of common pleas, which are the proper and legitimate matters for the attention of the Supreme Court, will be delayed by thrusting upon them this original jurisdiction, for which there is no necessity whatever.

I hope, therefore, that this amendment to the amendment will not prevail, and then I hope that the amendment will be voted down.

The amendment to the amendment was rejected.

Mr. BROOMALL. I move to add to the amendment the word "defendant," so that it will read "where a corporation is a party defendant." I am not willing to let a corporation drag an individual into the Supreme Court, because there is no necessity for it. A corporation can get an injunction against an individual in his own county. The reason for allowing one corporation to bring another, or an individual to bring a corporation into the Supreme Court by this process, is because the corporations are so ramified in their interests that they virtually embrace the judges of the very courts that are called upon to grant an injunction. I think the President of this body remembers an instance in which a judge of a court of his own county refused to grant an injunction, and legislation had to be procured to get justice against a corporation, the judge being largely interested in the corporation.

The only reason for putting in the provision at all is because of the power of these corporations, and because of the likelihood there is that the judge of the court of common pleas will be interested as a stockholder or bondholder in some way in the railroads within his district. That is the only reason, and that does not extend to individuals. Hence I think this power should be limited to cases where a corporation is a party defendant.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Delaware to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment.

Mr. CORBETT and Mr. HUNSICKER called for the yeas and nays.

The PRESIDENT *pro tem*. Do ten gentlemen rise to second the call?

The yeas and nays were ordered, more than ten members rising to second the call.

SEVERAL DELEGATES. Let the amendment be read.

The CLERK. The amendment is to insert after the word "of" in the fourth line of the section, the words "injunction where a corporation is a party defendant."

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Armstrong, Bailly, (Perry,) Beebe, Biddle, Bowman, Brodhead, Broomall, Bullitt, Calvin, Campbell, Carey, Church, Corson, Curry, Dallas, Darlington, Edwards, Elliott, Finney, Fulton, Guthrie, Hanna, Hazzard, Hemphill, Kaine, Knight, Lilly, MacConnell, MacVeagh, Mitchell, Mott, Niles, Patton, Read, John R., Reed, Andrew, Reynolds, Russell, Sharpe, Smith, H. G., Wetherill, John Price, Wherry and Woodward—43.

NAYS.

Messrs. Bailey, (Huntingdon,) Black, Charles A., Brown, Cassidy, Corbett, Cronmiller, De France, Ewing, Hay, Heverin, Horton, Hunsicker, Landis, Lawrence, Littleton, M'Clean, Mann, Minor, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Simpson, Struthers, Temple, Walker, Worrell and Wright—29.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baer, Baker, Bannan, Barclay, Birdsley, Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Curtin, Cuyler, Davis, Dodd, Dunning, Ellis, Fell, Finck, Gibson, Gilpin, Green, Hall, Harvey, Howard, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Porter, Paghe, Purviance, John N., Rooke, Ross, Runk, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Meredith, *President*—61.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

The section as amended was agreed to.

The CLERK read the next section 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.

Mr. KAINE. I move to strike out all after the words "section four" and insert what I send to the Chair.

Mr. ARMSTRONG. I would suggest to the gentleman, if he will permit me for one moment, that the section as it now stands is precisely the third section of the fifth article of the present Constitution,

with the exception that it provides that "not more than four counties shall at any time be included in one judicial district" instead of five, as in the old Constitution. Let this section pass, and if the gentleman has an additional section to offer, let it be as a new section hereafter.

MR. KAINÉ. The adoption of this section as it stands would entirely exclude the one that I have to offer, and it is to take the place of it if adopted.

The PRESIDENT *pro tem*. The amendment of the gentleman from Fayette will be read.

The CLERK. It is proposed to strike out all after the words "section four," and insert:

"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 district over which they are to preside for the term of ten years, if they so long behave themselves well. The General Assembly shall at its first session after the adoption of the amendments to the Constitution, divide the State into suitable judicial districts, and provide for the election of three judges in each district, except when a single county shall require a greater number; but no county shall be divided in forming a district. 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, 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. KAINÉ. Mr. President: This amendment contains the principle in substance of an amendment which I offered in committee of the whole, but I have changed it very much in its details. This amendment leaves it entirely to the Legislature to form the districts, to fix the time of holding courts, and the manner in which the judges shall meet together to hold courts in banc. The great

objection made to the original proposition which I offered in committee of the whole was that I had districted the State, which I did more for the purpose of illustrating the plan and the principle than anything else; but I have concluded that it would be much better to merely establish the system in the Constitution, and leave the details of the organization of the courts, and the manner in which they shall take cognizance of the business that shall come before them as courts in banc, to the Legislature. A district may consist of two counties, it may consist of three, or it may consist of more, just as it may suit the circumstances of the district proposed to be established, and of that the Legislature can be and will be the proper judges, coming as they do directly from the people and from the various districts.

I think, Mr. President, after having given this subject considerable reflection, after having examined the systems of every State in the Union, that this will answer a better purpose for the organization of courts of common pleas than anything that I have been able to come across. I have received many letters and communications from different parts of the State from distinguished members of the bar who very freely approve of the plan. Three judges in a district will hold their regular courts, each one alternating; and at such times as the Legislature may provide, once, twice, three or four times a year, these judges will meet in banc under this system in each county in the district and there hear and determine important questions, motions for new trials, reserved points, and every thing of that kind, which will at once strike the minds of legal gentlemen upon this floor. When those matters are heard on full argument before this court in banc and determined by three judges or by a majority of them, the decisions will give satisfaction, in my opinion, to a large portion of the people, and without any additional expense will relieve in a great measure the troubles of the Supreme Court. A question decided by three judges living in three different counties will be entitled to greater weight and greater consideration than that decided by one in the hurry, perhaps of an argument and a trial.

This proposition will establish a system throughout the State that I think will work well. I hope it will commend itself to the members of this Convention and that it may be adopted. I do not desire

to weary the Convention with a long argument in its favor. It was the subject of argument here before and the principle of it fully debated, and I leave it now for the discussion and consideration of the Convention.

Mr. FULTON. I move to amend the amendment by striking out all after the word "election," in the ninth line, down to the word "courts," in the thirteenth line.

The PRESIDENT *pro tem*. 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 court to be holden in said county, unless from some unavoidable cause it shall be rendered impracticable."

Mr. FULTON. I simply desire to say that the change I wish to make in this amendment is to strike out the alternation of the judges traveling from county to county, so that each judge may remain in his own county and hold the court there unless some special circumstance requires a change in the judges. It is objected by a great many gentlemen to this section that the changing of the judges would not work well, and for one I should be glad to see that provision struck out, and then I should support the amendment.

Mr. LILLY. There is another objection that I have to the amendment as it stands. I should be glad to vote for it, as it is thought it would relieve the Supreme Court; but the objection that I have heard among my legal friends in this Convention struck me with a great deal of force, and that was, that where a judge who had tried a cause was allowed to sit in banc with the other judges, they would all go with him. My idea would be to prohibit the judge who decided a case from sitting in banc at all on that case. With that amendment I think I should vote for the proposition.

The PRESIDENT *pro tem*. 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 ayes being seven, less than a majority of a quorum.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Fayette.

Mr. WOODWARD. I rise merely to say that I consider this is the best proposition we are likely to get in the way of an intermediate court. It is not what I would wish it to be; it is not what I think the public interest requires; but it comes nearer to an intermediate court than any proposition I have seen. It provides that the Legislature shall divide the State into districts containing at least three judges. The probability is that they will contain more than that. Then it provides that these judges shall alternate. That, instead of being an objection, as was urged by a gentleman near me, is I think a recommendation of the amendment. That they shall sit in banc to review their own decisions on motions for a new trial, is certainly an improvement; and if this intermediate court could have been made, as I proposed to make it, a court of errors and appeals exclusively, with no original jurisdiction, the Supreme Court would have been greatly relieved. Under this arrangement, the Supreme Court will not be at all relieved. But my ideas were crucified in committee and afterwards on second reading before the House. They were wrong, of course. But when you cannot get what you believe to be right, the rule of common sense and of my life has been to take the nearest to the right that you can get. Now, this amendment of the gentleman from Fayette seems to me to be in the right direction. It provides for an intermediate court. It does not give that court final jurisdiction in any case, and therefore does not relieve the Supreme Court a particle; but supposing that the Convention will not go any further in this direction than this amendment, and it is doubtful whether they will adopt this amendment, I feel like voting for the amendment and hope it will be adopted as the best we can get. I think I could devise a better plan if gentlemen would consent to think of it favorably.

Mr. S. A. PURVIANCE. I move the twenty-fourth section of the article as passed by the committee of the whole, as an amendment to the amendment of the gentleman from Fayette.

Mr. ARMSTRONG. I rise to a point of order, and I do it with great reluctance.

The PRESIDENT *pro tem*. The gentleman will state his point of order.

Mr. ARMSTRONG. The gentleman from Allegheny proposes to move as an amendment to the pending amendment a section of the article which will come before the Convention in its order. Sections cannot be taken out of their order in that way. As this is now a report from the committee of the whole, it must be considered in its sequence and order as it arises. In making the point of order, I do not wish to antagonize with the gentleman, but I believe it will facilitate business.

The PRESIDENT *pro tem*. The Chair cannot sustain the point of order taken, but he is compelled to rule that the amendment offered by the delegate from Allegheny is not an amendment to the amendment as he views it.

Mr. BROOMALL. As I understand, the question now is upon the amendment offered by the delegate from Fayette.

The PRESIDENT *pro tem*. That is the pending question.

Mr. BROOMALL. Mr. President: It seems to me that this amendment is open to all the objections that the intermediate court is without having any of the advantages of that court. The gentleman from Philadelphia (Mr. Woodward) says, with a good deal of force, that it will not relieve the Supreme Court any. If it will not relieve the Supreme Court any, (and I believe he is right there, because I believe it will not stop a single case from going to that court,) then I submit that it will not be of any use in any other point of view.

Then it lacks all the virtues of the circuit court. It is liable to all the objections to that court, as any one will see who will consider it for a moment. It entails upon parties just the same delay that that does. It comes to the same thing after the end of a year that a single judge in his single district would come to probably within thirty days, and so denies justice by postponing justice. Every case that is tried will be hung up on a motion for a new trial, which cannot be heard as now, often in the course of thirty days, and be disposed of, and probably not before the end of a year, because these courts in banc will certainly not be held every thirty days, nor every ninety days. They will be held probably once in one or two years, so that every case will be hung up during all that time; and when at last the court in banc has the motion for a new trial before it, it will decide it precisely in the same way that the judge who decided the case decided it, in nine hundred and ninety-nine cases out of a thousand.

That is the experience here in the city of Philadelphia.

The gentleman from Carbon, (Mr. Lilly,) seeing this difficulty, proposes to exclude the judge who tried the cause; but that will not help it. You exclude all the immediate information upon the subject of the trial unless you let him stay, and if you let him stay and give advice and information, then the other judges will follow him; they will not reverse him. Experience shows us that they will not. I am therefore opposed to this measure on account of the delay. I am opposed to it on another ground, because it divides the responsibility and therefore lessens it. It does not add any more judicial skill to the bench and it divides the responsibility of the decision between three judges instead of fixing it upon one.

However, I do not suppose that there is any danger of this Convention going back upon itself and adopting an intermediate court in a worse form than that which has been so often voted down.

Mr. KAINE. Mr. President: I hope the Convention will not be alarmed by the bugbears that have been started just now by the Sir Oracle from Delaware county. That gentleman is opposed to everything of this kind; he is opposed to any reform whatever in the judiciary; and, therefore, he is willing to hatch up anything that his fertile imagination can produce for the purpose of defeating any measure which looks to a reform in the judiciary of this State.

Mr. ALRICKS. I call for a division of the question, so that the first division will end with the third line, "behave themselves well," and the second division end with "the division of the State into judicial districts."

Mr. ARMSTRONG. Mr. President: The first division of the question proposed by the gentleman from Dauphin will be found to be fully provided for in the fourteenth section as it stands. It is, therefore, unnecessary. As to the rest of it, I look upon it as an attempt to introduce a sort of intermediate court in its most inefficient and objectionable form. The whole question has been fully discussed before. I do not think it wise at present to prolong the discussion.

The PRESIDENT *pro tem*. The question is on the first division.

Mr. ALRICKS. I withdraw the request for a division and will take the question on the whole proposition.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Fayette (Mr. Kaine.)

MR. KAINE. I call for the yeas and nays.

More than ten members rising to second the call, the yeas and nays were ordered and taken with the following result :

YEAS.

Messrs. Bailey, (Huntingdon,) Beebe, Black, Charles A., Brodhead, Brown, Bullitt, Corson, Curtin, Elliott, Fulton, Guthrie, Hanna, Hemphill, Kaine, Mitchell, Read, John R., Sharpe, Smith, H. G. and Woodward—19.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Biddle, Bowman, Broomall, Calvin, Campbell, Carey, Cassidy, Church, Corbett, Cronmiller, Curry, Dallas, Darlington, De France, Edwards, Ewing, Fell, Finney, Hall, Hay, Hazzard, Heverin, Horton, Hunsicker, Knight, Landis, Lawrence, Lear, Lilly, MacConnell, M'CLean, Mann, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Simpson, Struthers, Temple, Walker, Wherry, Worrell and Wright—56.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Alney, Andrews, Baer, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dodd, Dunning, Ellis, Funck, Gibson, Gilpin, Green, Harvey, Howard, Lamberton, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Meredith, *President*—58.

The PRESIDENT *pro tem.* The question recurs on the fourth section.

MR. FULTON. I offer the following amendment, to come in after the word "otherwise," in the first line :

"Provided by law, the common pleas districts shall continue as they are. Each district shall be entitled to at least one judge for every fifty thousand of its population; the manner and times 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 commission of the same date shall be determined by lot."

MR. President, I offer this amendment to the fourth section for the purpose of meeting several difficulties that will arise as we progress in this report. The first and most important is a proposition to cut the State up into small and single districts. I take it that this is a subject where we cannot go into detail from the constant changes of the business in the different counties of the State. If we fix and crystallize a rule here in the Constitution to govern the judiciary of the State or regulate it for the next thirty or forty years, perhaps, we cannot meet the demands of the people. It is a subject to my mind that should be left to the Legislature, as it always has been; and as there have been some complaints in different parts of the State of an insufficient force in the judiciary, I make that provision to require the Legislature to give a judge for every fifty thousand population, and this I think will be ample to do the work of the bench; and it seems to me that by leaving the districts as they are, it will furnish a much better judiciary, of a much higher grade, than that which we should have by cutting the State up into small districts of thirty thousand people each, as is proposed, and it would also distribute the force in such a way that it would meet the work or labor to be done by the judiciary. Now, for example, take a small agricultural county in the interior of the State of thirty thousand people, and give it a judge; it certainly is well known to every member of the bar in this Convention that such a county will not afford work to keep a judge more than two months in the year at the outside. Just alongside, we may have a commercial or a manufacturing, or a mining county, or a county, traversed by railroads and public works, that has three or four times the amount of litigation for the same population, and by leaving the State in larger districts and throwing two or three judges in the same district you enlist each judge in bringing up the work of that district.

There are other difficulties which have been referred to in the discussion of this question, one of which I desire to briefly call to the attention of the Convention. It is known that our judges are selected from the members of the bar in the several counties. They are selected every ten years. Now, you take in a county, perhaps, one of the leading members of the bar, in full practice, and elect him to the bench. For five of these ten years the business of that court is interrupted by the constant appearance of cases in which that judge has been concerned as counsel. If we could have two or three judges in the district, a change could be made by the judges from one county to the other, so that each could try the other's cases, thus relieving us of this difficulty, which certainly is a very serious one.

But I do not wish to detain the Convention, and therefore suspend my remarks, hoping that the Convention will adopt the amendment now under consideration.

MR. MITCHELL. Mr. President: I do not know what may finally be determined upon by this Convention, but I wish to reply to the gentleman from Westmoreland (Mr. Fulton.) As I understand his proposition, it is that one judge is able to do the labor created in a population of fifty thousand. In point of fact the gentleman is mistaken. Butler county has a population of thirty-seven thousand, and Lawrence county has a population of twenty seven thousand. One judge is not able to do the work of those two counties.

Let the gentlemen of this Convention in their wisdom decide upon what they please; I say that the single district system is the best for the people of the State. I know as a matter of fact that Lawrence county has business sufficient for one judge. No amount of theory will overcome the facts of the case. I know that Butler county has enough business for one judge, enough to keep him occupied as great a portion of the year as one man ought to be allowed to work. I very much doubt if there is a county where the business would not justify the making of one judge—because I believe as far as my experience goes, every county has sufficient judicial business for one judge—there are a number of other matters beside the hearing of cases that a judge can very well attend to, which are not now included in his duties. For instance, in reference to orphans' court accounts which are called up before the judge, it is expected

that the judge will examine those accounts, but instead of doing so he simply calls them over, states the balance, and asks whether there are any objections to their confirmation. Now, unless the orphans or the widow or the family have money to employ counsel, that account may pass in almost any shape. If the judge, however, had time to examine the matter, if he lived in the county of the decedent and could examine the accounts, a vast amount of injustice that is now done in this way might then be averted.

Another thing; if the judge who may complain of not having enough work to do, instead of appointing an auditor, would examine the subject-matter, and adjust or decide it himself, a great amount of expense could be saved. So in other things. It is idle to tell me, coming as I do from a county where I know that there is sufficient work for any reasonable man during the whole year—and this is not so alone in my own county, but in all the adjoining counties—that there is not enough work for a judge to do in any county of the State. If the people of a judicial district find that a judge has not enough labor, they can easily remedy that. But I say that this Convention, in committee of the whole, decided that the great trouble was in the counties themselves, and I say that this Convention having once decided that a county having a population of thirty thousand should have a separate judge, I believe that they arrived at the wisdom and the sense of the matter. I believe they should and will adhere to that decision, unless indeed there is so little deliberation in the Convention that they will upset to-morrow what they may decide to-day.

MR. ARMSTRONG. Section four as it stands now is, I believe, in its best form, and is precisely as it is in the old Constitution, except preventing the making of districts exceeding four counties instead of five. I desire now simply to remark that the question which has been raised by the amendment of the gentleman from Westmoreland would more particularly apply to the twenty-fourth section. The whole question will come up for consideration under that section which begins, "Each county containing thirty thousand inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law."

I think it is better, therefore, to omit here the incidental discussion of a question which will come up upon a section

where we shall meet the issue fairly and squarely.

Mr. FULTON. At the suggestion of a number of delegates I withdraw my amendment for the present, for the purpose of introducing it at a future time.

The PRESIDENT *pro tem*. The amendment being withdrawn, the question recurs upon the section.

The section was agreed to.

The PRESIDENT *pro tem*. The fifth section will be read.

The CLERK read 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. 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 such judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid.

Mr. ARMSTRONG. I desire to move a verbal amendment. In the twentieth line I propose to strike out the words, "*Provided, that,*" and insert the word "*and.*"

The amendment was agreed to.

Mr. DALLAS. I move to amend by striking out all after the word "*section,*" and inserting what will be found on page

431 on the Journal, comprising the minority report made by Mr. Cuyler and myself to the report of the Committee on the Judiciary, as follows:

The words proposed to be inserted were read as follows:

"In the city of Philadelphia, the district court, and the court of common pleas, and the jurisdiction, powers and duties of said courts, shall remain as at present, except that the district court shall not hereafter have any jurisdiction in equity, and all the jurisdiction of the court of common pleas for the trial of common law cases, and upon *certiorari* and appeal from any lower court or magistrate, is hereby transferred from said court of common pleas to and vested exclusively in the said district court. This provision shall not affect any proceeding which may be actually pending when this Constitution shall go into effect.

"The prothonotary of each of said courts shall be respectively selected by the judges thereof, and the numbers of his subordinates and the general regulation of the business of his office shall also be prescribed by them. The said prothonotaries and subordinates shall be compensated only by fixed salaries, the amount of which shall be fixed by the court, and all fees collected in said offices, except such as may be by law due to the State, shall be paid into the city treasury.

"The Legislature shall provide for the employment of phonographic reporters in the said courts."

Mr. DALLAS. In reply to those gentlemen who have asked me to pause at the end of the different paragraphs of the proposed amendments, I will state that the purpose of each and all of them can be accomplished when we come to vote by calling for a division of the amendment. If it does not pass as a whole, perhaps some parts of it may be adopted.

Mr. CAMPBELL. Question! Question!

Mr. DALLAS. I am willing to give way until the delegate from the city (Mr. Campbell) is tired of calling "question," and then I will resume my remarks.

The PRESIDENT *pro tem*. The gentleman from the city will proceed, and the Chair will protect him, in his discussion of his amendment, from interruption.

Mr. DALLAS. Mr. President: The amendment which I have offered is the report of a minority of the Committee on the Judiciary. It is the report of Mr. Cuyler and myself, who with Judge Woodward, were the only Philadelphians

on the Judiciary Committee, and that minority report is the entire amendment as I have offered it. It does not entirely meet my own views, but it provides that there shall be but two courts for the city and county of Philadelphia, whereas the majority report of the Committee on the Judiciary provides for four. If I could have my own way there should be but one, but I think that two courts certainly will not be as objectionable as four.

We have heretofore had in the city of Philadelphia for a very long number of years two local courts, the district court and the court of common pleas. The great body of common law trials have been disposed of in the district court. The district court has had and lost and had again bestowed upon it equity powers. The court of common pleas has had common law jurisdiction upon the trial of appeals from aldermen up to a certain small amount, so small as never practically to be invoked except upon appeals from aldermen. It has had equity jurisdiction continuously as courts of common pleas have it in the country, and its judges have also been the justices of oyer and terminer, quarter sessions and general jail delivery. Now, the report of the majority of the Committee on the Judiciary proposes to give us in the city of Philadelphia four separate and distinct courts, of three judges each, and provides for addition to the number of those courts, so that we may come to have five, or six, or seven such courts, with precisely the same jurisdiction and powers in every particular. So that the result will be that we may have conflicting, absolutely differing, decisions in those four courts upon various legal questions in the city of Philadelphia. I do not know of any respectable member of the bar of Philadelphia, no matter how else they may differ, who have asked for the change which the report of this committee would put upon us here; and it is no answer to our appeal to this Convention to say that the purpose is to make our courts precisely like the rest of the courts of the Commonwealth of Pennsylvania.

Mr. President, the minority report, instead of proposing four separate courts of exactly equal and co-ordinate jurisdiction, proposes that we shall have two, as we have been accustomed to have them; and that as to those two the jurisdiction shall be so divided that hereafter we need never fear this conflict of decisions between the courts, for it proposes to give

to the district court all the common law jurisdiction, and it proposes to give to the court of common pleas all the duties devolving upon them as equity judges and as judges of the criminal court; so that we have by the minority report, instead of four petty courts for this city, two important courts with their jurisdiction not identical, but so divided that they can run parallel without danger of crossing in the line of their decisions.

Mr. President, these are the main features of difference between these two propositions. The proposition from the majority of the Committee on the Judiciary giving us four courts with three judges each, with capacity to increase in number indefinitely is, as I have said, a change radical and entire in our system in Philadelphia, asked for by no respectable number of its citizens or members of its bar. They do not want it; they do not desire it; and there is no reason why it should be put upon them.

Now, Mr. President, look at the effect. You give us several little courts, all of them having jurisdiction over the same subject-matter, the same amounts, the same population, the same territory. They may differ in their decisions; they probably will. They will differ rightly—I mean from no improper motives in their decisions, but conscientiously. There will be no possible means of obtaining unification of our legal decisions. A man who desires an injunction will go into one court; a man who desires to succeed against a corporation will seek another court. And worse than that, corporations that want to succeed will come to go into some one court as their court, and the people will begin to think so, and it will have the direct effect of degrading the judiciary of this city.

In addition to that first section, the main feature of which I have merely intended to point out, the second section provides for a single prothonotary's office for each of those two courts, and that the prothonotary shall be appointed by the courts and shall be subject to removal by the judges. I suppose upon that subject there will be no objection whatever.

In addition to that, there is a third proposition proposed by this amendment, and one which the gentleman from Philadelphia, (Mr. Cuyler,) who joined me in this report, and who I greatly regret is not in the House to-day, had as warmly at heart as I have myself; that is, that for the city of Philadelphia the organization

of our courts should not be taken to be complete without a stenographic reporter. That is another matter in which our wants and necessities differ from the wants and necessities of the rest of the State. The only possible objection urged against it is that it is matter for legislation and not for constitutional provision. That it is a great good I have heard no man upon this floor deny, and I know no delegate in this Convention from the city of Philadelphia who will not affirm it. It would be a saving to the Commonwealth in the lesser judicial force that could transact our business when aided by reporters able to take down every word as uttered. We can proceed with the trials of our causes much more rapidly. Cases that are pressing upon us from day to day could be heard in one day with these reporters to assist the court and counsel; and in response to this single objection, that it should not be asked for as a constitutional provision, it seems to me that the answer is contained in a very few words; that is, that we have provided for judges, we have provided for prothonotaries and clerks, and all as officers to perfect the organization of the courts. Now, I affirm that the phonographic reporter to these courts when once appointed and established would become, after the judge the most important officer of the court, and why should he not be made a part of its organization, a necessary part of its creation by this instrument, creating this officer as much as any other officer of the judicial force?

Then the object of my amendment is first to do away with what is proposed by the committee, viz: four small courts of equal and co-ordinate jurisdiction, and to put in their place only two courts of separate and distinct jurisdiction; and second, to provide that the prothonotary of each of these courts shall be appointed by its judges respectively and be subject to removal by them; and thirdly, that those courts shall not be considered as fully organized without a stenographic reporter to assist them in their labors.

MR. CAMPBELL. Mr. President: The delegate's remark concerning myself was certainly very amiable and gratuitous. When he offered his amendment, I supposed that after having had the opportunity of speaking upon and advocating it in committee of the whole, of speaking *ad libitum* upon it if he so wished, his good sense would have prevented him from making a long speech over again at the

present time, and therefore, as I thought he had stopped talking after he offered the amendment, I called "question," so as to get to a vote; but the unfortunate habit of the delegate in repeating speeches on second reading that he makes in committee of the whole, led him to talk as usual, and I mistook a pause he made in his speech for the conclusion.

Now, Mr. President, I hope this amendment will not pass. We voted it down in committee of the whole and adhered to the report of the Judiciary Committee on this subject of the Philadelphia courts. The delegate from Philadelphia is certainly mistaken when he says that the bar and people do not want the system proposed by the Judiciary Committee. I say, on the other hand, we do want it. It is a better provision than any other that has been yet proposed. I do not think it is the most perfect system that could be devised, but it is the best that has been presented, and for that reason I would wish to see the report of the committee adhered to and these proposed courts given to us in Philadelphia.

I want if possible to have some system of this kind provided, so that we can break up in Philadelphia what the citizens greatly complain of, the abuses connected with our criminal court. By having courts of concurrent jurisdiction, composed of three judges only in each, suitors can choose whichever one they please, and take their business to the court which metes out justice in the fairest manner. By having more courts than at present and having the judges of all of them assigned in rotation to attend to criminal business instead of confining such business as at present, to a small number of judges—a system which is laborious upon the judges and not a favorite with the bar or the public—I should therefore like to see this section of the report of the committee adopted.

MR. J. R. READ. Mr. President: I trust that the amendment offered by my friend (Mr. Dallas) will be adopted. As the other delegate from the city (Mr. Campbell) alludes to its having been before the Convention before, I desire to call his attention to the fact that he is mistaken. At the time this subject was up before the Convention in committee of the whole, the gentleman (Mr. Dallas) was, if I recollect aright, detained from the Convention on account of the death of a member of his family. The minority report as signed by himself and Mr.

Cuyler was never offered to this Convention and was never before it; and if the gentleman will turn to the Debates, he will find what I say to be the fact. So much for that.

Now, Mr. President, I believe I state the fact when I say that it is almost the unanimous sentiment of the bar of this city and the unanimous sentiment of the judges of both the courts of this county that they desire "to be let alone," and any change such as is proposed by the article as reported from the Committee on the Judiciary will be exceedingly repulsive and will meet with the almost universal condemnation of the people of the city of Philadelphia.

This report proposes to make a change where a change is not desired. It proposes to make an experimental reform where there is no suffering, where there is no inconvenience, to administer a powerful remedy where there is no disease. It proposes to put judges into the courts of quarter sessions and oyer and terminer of this county—judges who are entirely unfamiliar by their education and by their experience for the discharge of the duties of those courts. It proposes to make four small courts with co-ordinate jurisdiction, such as they have in the city of New York, at least virtually the same.

Now, I say that the report of the committee simply makes a change. It merely gratifies the desire to knock down, to break up, to try something new. We do not want it here. The Convention have failed to make any change or to make any reform where it was most needed. No gentleman can turn to the article reported from this committee and say that its provisions, so far as the Supreme Court are concerned, are a relief to the suitors of this community. The addition to their number will not relieve their over-crowded lists. There is where the reform was needed, not here, and I do trust that the amendment, as offered by my friend, and which in effect takes from the court of common pleas that part of its business which, so far as I understand, it is not necessary that it should have, and to confer it upon one court who will thus have all the common law jurisdiction of the courts of this county, and before whom all jury cases shall be tried, and then to take from the district court its equity jurisdiction and confer that upon the courts of common pleas, we shall then have a very simple system; we shall have one court competent to try all jury cases, and one

court to hear all other questions. When I say that, I say that which I believe to be most desirable, and I do trust that this Convention will pause and will hesitate before they inflict upon our city a system which is merely experimental, which is not desired and which will certainly be repugnant to the people of this city.

The PRESIDENT *pro tem*. The hour of one having arrived, the Convention takes a recess until half past three o'clock.

AFTERNOON SESSION.

The Convention reassembled at half-past three o'clock P. M.

THE JUDICIAL SYSTEM.

The Convention resumed the consideration on second reading of the article on the judiciary.

The PRESIDENT *pro tem*. The pending question is on the amendment offered by the delegate from Philadelphia (Mr. Dallas) to strike out the fifth section and insert what will be read.

The CLERK read as follows:

"In the city of Philadelphia, the district court, and the court of common pleas, and the jurisdiction, powers and duties of said courts, shall remain as at present, except that the district court shall not hereafter have any jurisdiction in equity, and all the jurisdiction of the court of common pleas for the trial of common law cases, and upon *certiorari* and appeal from any lower court or magistrate, is hereby transferred from said court of common pleas to, and vested exclusively in the said district court. This provision shall not affect any proceeding which may be actually pending when this Constitution shall go into effect.

"The prothonotary of each of said courts shall be respectively selected by the judges thereof, and the numbers of his subordinates and the general regulation of the business of his office shall also be prescribed by them. The said prothonotaries and subordinates shall be compensated only by fixed salaries, the amount of which shall be fixed by the court, and all fees collected in said offices, except such as may be by law due to the State, shall be paid into the city treasury.

"The Legislature shall provide for the employment of phonographic reporters in the said courts."

Mr. WORRELL. Mr. President: This amendment affects Philadelphia only. Yet as the whole of the Convention must pass upon the question, I feel constrained to express what I understand to be the

judgment of my constituents as well as of the bench and bar of this city upon it. I think they would sincerely deplore any attempt to substitute a fragmentary judicial organization for our present respected and competent and powerful courts. The proposed change can produce nothing but uncertain and irregular procedure, unsatisfactory and conflicting decisions, and a weakened and unstable judiciary. They are therefore opposed to this scheme of the committee and desire that our judicial system may be preserved as it is at present, one court of common pleas and one district court; I think I can say that no section of the new Constitution would receive as general opposition as the one now before the Convention.

I have said heretofore that I favor the appointment of prothonotaries by the courts.

With regard to the last paragraph of the amendment, I trust that it will be voted down. It is nothing but experimental legislation.

Mr. BIDDLE. What is that?

Mr. WORRELL. The provision for employing stenographers in the courts; and I will state to the gentleman who proposed it that there is an act of Assembly passed this year which covers that entire ground.

Mr. BIDDLE. Mr. President: I cannot understand why, after the very full discussion upon this section heretofore, in which all the advantages and disadvantages were thoroughly weighed, this opposition to it should spring up now. I propose to answer as briefly as I can the objections which are made to the section.

In 1810, the court of common pleas then being unduly pressed by business, a branch court of the common pleas was established which certainly worked satisfactorily for a time. It was confined to the trial of civil issues.

After a while, some fifteen years ago, probably more, in order to bring it in harmony with the other court in which the equity practice was beginning to be considerable, it had equity powers conferred upon it to the very great advantage of the suitors. Some six years ago, the equity powers were taken from this branch court, and recently, within two or three months, they have been re-conferred upon it.

We are told here by a number of gentlemen professing to represent the entire legal interests of the city of Philadelphia, that any change by which this branch

court shall be compelled to discharge all the judicial duties of the parent court from which it springs, will be regarded as an infliction upon the community and something which the bar and the bench of Philadelphia are alike opposed to. So far as I know the sentiment of the people, I do not believe any such thing. I believe it will be regarded as no infliction, but on the contrary will be held an improvement in accordance with the original design of the court and with the desires of the people. The design of that branch court was to give it co-extensive jurisdiction with the common pleas. Now, if you take from the district court all criminal jurisdiction, all equity powers, you leave it a very limited and a very lame affair.

Why, Mr. President, just think of what the Convention is asked to do in regulating this district court to its original narrow jurisdiction. Abroad the sentiment of the whole profession is in favor of blending the equity powers of the courts of chancery with the powers of the courts of common law; and a bill elaborated with a great deal of care and suggested during the past winter by the Chancellor of Great Britain looks in that direction, while we should be stripping our district court of that which it already possesses; and for what? For what it is difficult to understand; either to gratify the mere private wishes of some of the judges in that court, or because it is supposed that it is unadvisable to disturb that which has heretofore performed its part tolerably well.

Now, I, for one, am emphatically for bringing the judicial power of the county of Philadelphia in accord with the judicial power of the rest of the State. No good reason can be pointed out, except that it has so happened during the last fifty years, for keeping these two courts distinct. The narrower the jurisdiction, the narrower the intellectual processes of the court—you really maim and put at a disadvantage a tribunal by depriving it of that which is possessed by other tribunals sitting alongside of it.

And in regard to the administration of criminal justice in the county of Philadelphia, I say unhesitatingly, as the result of a considerable examination into the subject, that it will be an enormous advantage—I use the word advisedly, I do not over-state it when I say an enormous advantage—both to citizen and court to have every judge of the county of

Philadelphia, for at least one month in the year, go into that court and discharge its duties, sitting there long enough to acquire competent knowledge of the business, but not too long to be affected, and I may say infected, by the atmosphere which always hangs over a criminal court, and which sooner or later becomes injurious both to him who practices constantly and to him who presides constantly in such a jurisdiction.

Do gentlemen recollect that the highest judge in the Kingdom of Great Britain considers it no derogation from his office to mingle in the administration of criminal justice, and to try criminal offenders? For my part I cannot imagine any spectacle more calculated to endear the judiciary to a people than to see its chief heads participating in the administration of that justice which goes home to the meanest individual in the community. The moment you put a man above and beyond that, you really declare, so far from affixing a dignity to his position, that he is unfitted for the business which he is selected to discharge. Why should six judges or five judges in the district court undertake to say that they are only to try the civil issues, when the highest judges abroad and the highest judges of the land in this country, from the Chief Justice of the United States and every associate of his court, mingle with advantage to himself and to the whole community in the administration of criminal justice? Let gentlemen reflect upon the result of their actions here. The principle of the amendment is not in accordance with the universal sentiment of the city of Philadelphia, in accordance with the universal sentiment of the delegates who are supposed to represent specially that community here—for I see before me and around me gentlemen who differ entirely with the views of the two gentlemen from Philadelphia who have spoken to day. Why should this question be discussed in the narrow view in which it seems to me to be presented, instead of being looked at in the shape in which it becomes important to gentlemen representing every section of this broad Commonwealth to regard it? Why should we be deprived of this enlarged experience, these broader views which the administration of equity and which the administration of criminal justice gives to a judge in the rest of the State, by being told that in Philadelphia you shall have one court to try all the civil issues, that is the com-

mon law part, and then by a most extraordinary perversion of terms, have the court of common pleas which, according to the amendment of the gentleman who spoke first to-day, is not to try a single common plea between man and man in the city of Philadelphia? I cannot imagine a greater anomaly. What is its advantage? It is that it is always to be supposed that because men are doing the same thing all the time they will do it a great deal better. There never was a greater mistake than that. They do acquire a little mechanical expertness in the business which they are doing every day; but they lose that breadth, they lose that larger experience, they lose the wider views which the administration of equity has given and is continuing to give judges who administer the common law exclusively.

What does this section propose? I am not at all tenacious about the form in which it is presented by the committee, although I believe after having looked at it with some care, and after having had more than one conference, much to my own advantage, with the members of the committee, that the plan proposed by them is the best one, of having four branches co-equal in jurisdiction, with three judges each, because I believe that three is a better number than six. I am not at all tenacious about this, however. What I am tenacious about is the great principle enunciated in this section, by which all the judges in the county of Philadelphia, are made to discharge precisely the same functions as they are in the rest of the State, because I believe in that way they will be better judges and the interests of the suitors will be better subserved. But I am authorized now and here to say that if this Convention adopts the principle of the section as reported from the Committee on the Judiciary, that is to say, the section conferring criminal and equity jurisdiction alike upon all the courts of Philadelphia county, the judges of the district court prefer it in the shape in which it comes from the committee to-day, rather than in any other shape. Why do I say this? There is no objection to repeating what occurred in the interval of the sessions of the Convention. One of the judges of the district court called upon me, and while he told me frankly that the judges of his court would prefer the district court remaining just as it is, (which I do not find fault with them at all for preferring, be-

cause change is distasteful to most people,) yet if there was to be a change, if it was the sense of this House that criminal jurisdiction should be conferred upon them, that the equity powers recently re-conferred upon them should remain, that they should become, as they ought to become, a constitutional court in the sense of the Constitution, and not a mere legislative court, deriving its power from the Legislature alone, and which might be extinguished in a moment, they prefer very much the section in the shape in which it is presented by the Committee on the Judiciary.

I do trust, therefore, Mr. President, that the Convention will not—and I address on this point rather the members outside of the county of Philadelphia than those in it—that the members from the country districts, from the other portions of the State, will not, in the belief that the amendment offered by my colleague who spoke first is in entire harmony with the wants and wishes of the city of Philadelphia, and that the section is not in harmony with those wishes, vote for the amendment rather than the section. If they do they will inflict, in my judgment, a very grievous wound, not only upon the symmetry, which perhaps is a small matter, but upon the efficiency of the administration of justice throughout the State.

No possible good reason, except the old reason of keeping things exactly as they are, can be urged in favor of the amendment, while every philosophic view, every reason taken from the broader ground which should be occupied by this question, every reason by which it is sought to elevate the judiciary by giving them that refreshing contact with all sorts of business, is strongly in favor of the report of the committee in the shape in which the section now stands.

I hope, therefore, very warmly, Mr. President, that the amendment will be voted down and that the report as presented will be adopted.

Mr. NEWLIN. Mr. President: I am opposed to the amendment offered by my colleague, (Mr. Dallas,) and I am also opposed to the section as reported from the committee of the whole. When this matter was before the House on a former occasion, I voted in favor of the section as it now appears on our files; but on reflection, I am convinced that the advantages which it is thought would be obtained by making this change are not sufficient to

overcome the difficulties that will arise from a radical change in the formation of these courts.

If any alteration whatever is to be made, I would favor giving to the district court all of the jury trials, giving them the whole *msi prius* business that is now divided between the two courts, and leave to the common pleas the criminal jurisdiction and equity and *mandamus* and, if you please, *quo warranto* in certain cases. There is another provision which has been adopted in a subsequent section, which provides for probate courts, and that of course will absorb the orphans' court jurisdiction and do away with the audit system.

With regard to the criminal law, there is this practical observation to make: Owing to the impossibility of having a review in the Supreme Court of the rulings upon a trial in a criminal case, the criminal law is to a great extent traditional; and there arises an objection, and a serious one, it seems to me, in bringing in all these new judges of a different court which has different traditions of its own. The court of common pleas, sitting as a criminal court and having almost without intermission, ever since the foundation of the government, carried on all the criminal business, and having its own traditions, is better fitted I think to carry on that branch of jurisprudence than this court, which will be composed of all the judges of the two different tribunals.

There is another objection which did not strike me at first as being so great as it is, namely: the difficulty of having four courts of co-ordinate jurisdiction, each court having its own lists, its own orders, and its own times for taking up, say, equity cases or jury trials, or whatever branch of its varied jurisdiction might be brought before it. We might have three or four different equity lists and we might have cases in number one, number two, number three and number four.

The section as reported is more objectionable perhaps than the amendment proposed by my colleague, because under the provision as reported from the committee, attorneys could select any one of the four courts in which to bring their actions. The consequence would be that those judges who were particularly obliging and courteous and civil would be overwhelmed with business, and the judges who did not want to be over-worked would only have to be a little severe and they would speedily become unpopular

and the other courts would be over-taxed in that manner. Then again the peculiar views of certain judges would become known and certain classes of cases would be brought in particular courts, number one, two, three or four, according to the ascertained views of their judges.

I do not profess to speak by authority for any one, whether for the courts or for the bar, but I am free to say that I think fully three-fourths, certainly more than a majority, of the bar are opposed to any change such as this, and that, all things considered, they would sooner be let alone than have the change now proposed made in the fundamental law.

MR. HANNA. Mr. President: I believe there is a great deal of truth in the old saying to "let well enough alone," and I think it will apply in this case. I have listened very attentively to the argument of my colleague, (Mr. Biddle,) but I must say it has not overturned my conservatism in this respect. I believe that the whole question of what may be termed the local judiciary belongs to the Legislature of the Commonwealth, that it does not belong to the Constitution which we are now about to form. We should not forget that we are laying down a foundation upon which we are to build hereafter. I do not propose to build a structure, but merely ordain a system of general principles. Therefore I am willing to say that the judiciary of the State shall be a Supreme Court, a court of common pleas, and such other courts as the Legislature may from time to time establish. I think that is the just principle, and we should leave the wants, the necessities, and the absolute requirements of the people of the different sections of the State to be supplied by their representatives in the Legislature.

Now, Mr. President, with due deference to the honorable gentlemen composing the Committee on the Judiciary, I say that this is but the introduction of an untried experiment. It is imposing upon the people of Philadelphia, and I may say upon those who are more interested than even the mass of people, I mean the bar of the city of Philadelphia, a system which they have not as yet tried, which they have not yet considered, and which they never for one moment imagined would ever be submitted in the Constitution of the Commonwealth. I believe that the present organization of the courts affords with entire satisfaction. Wherever defects have been found in

the system they have been remedied from time to time by the proper authority, namely, the Legislature.

Why, sir, my memory goes back over our judicial system in the city of Philadelphia for perhaps twenty years. What have we had during those twenty years? My first recollection is that we had a district court consisting of three judges, and before those three judges were tried nearly all, I may say all, the important jury trials brought in the city of Philadelphia. By-and-by it was found that they did not supply the wants of the people, and then an additional judge was added. Then it was found that another judge was needed, and an additional judge was added to the bench, making what we now have, five judges in the district court.

Again, the common pleas within that length of time consisted of three judges. The business of the county grew, and it was found necessary to increase their number, and so during the last ten years two additional judges have been added to that bench, making five, so that we have five judges in the district court and five in the common pleas, and these ten judges have their proper jurisdiction, well understood by the bar and well established according to proper rules and regulations.

I may say that the district court of the city and county of Philadelphia is the popular court. Why? Because the bar bring nearly all their original cases in that court. It may average during a year twelve thousand original cases in the district court, nearly three thousand in a term. They have jurisdiction from one hundred dollars to any amount. So that we may say that this is the most popular court and the one most sought by the bar of Philadelphia. The only complaint that can be made in regard to the business of that court is that perhaps it is overcrowded, that cases cannot be reached. What is the remedy? The Legislature can give us the remedy; but now it is proposed to have four courts sitting at *nisi prius* trying cases brought before them.

Now, take the common pleas; look at their extensive jurisdiction. Their *nisi prius* business, however, amounts to but very little. With the appeals from our aldermen, and those appeals entered upon the appearance docket, together with the small attachments that are brought, the small replevins, and everything of that kind also entered upon the appearance

docket, they will not average over two thousand in a single year; showing that the mass of the business is brought by the bar in the court which they most regard.

Now, what do we propose to do, not by the request of the bar of Philadelphia? I wish you, Mr. President, to notice that fact. No petition has been presented here, no request whatever asking for such a radical change; but the bar are content with their present system. Now, what do we propose to do? Abolish the district court and constitute four separate courts of common pleas. If it was proposed to establish one court of common pleas, I perhaps would not see so much objection; but here we propose to establish four courts of exclusive jurisdiction of all proceedings at law and in equity commenced therein.

We are told we must have uniformity. Is that uniformity? You propose to have one court of common pleas in the interior throughout every county or every district; but here you give us in one single county four separate courts of original and exclusive jurisdiction. I respectfully submit to my friend from the city (Mr. Biddle) as a plain, practical, business-like question, how are we going to get along with four courts of exclusive and original jurisdiction? Now we have a plain, simple system. We have our five judges of the common pleas, and they at certain times have their courts in banc. Where will be your court in banc with four separate courts of common pleas? How will you have it? Are the three judges to be called the court in banc or is each court or every two of them to constitute a court in banc? Why, sir, I look on this system as fraught with the most direful confusion and productive of nothing but dissatisfaction and trouble.

At present we have a plain simple system. Our business is so comprehensive and so easily understood that it works smoothly and nicely. We have our respective courts in banc sitting from time to time with five judges, or a majority of them, as it may happen to be. We know exactly what we have and what we are to expect; but give us four courts, one, two, three, and four in the county of Philadelphia, and how, I pray, will the bar manage to control and direct their practice? I do hope, Mr. President, that this change will not be forced upon the bar and community of Philadelphia.

Mr. BULLITT. It seems to me, Mr. President, that the section as proposed is

very objectionable, and one which in practice will be found exceedingly irksome to the citizen as well as to the bar. It is always, as it appears to me, unwise to interfere with that which has been established, unless you are sure that there is some serious evil which can be overcome by something which you are introducing as new. As a general rule, the community adopt that which is best adapted to their wants and their interests. It was found in the history of the business of the city of Philadelphia that a district court was a desirable institution to engraft upon the judicial system of the city. This was adopted. At one time the act establishing the district court was repealed. Within a very short time afterward it was re-established because the people of the city found that it was so serious a deprivation to do without it. Now, I doubt very much whether you can introduce any system of courts in the city of Philadelphia which will work better than the system we have now, a district court and a court of common pleas. But if we are to have a court of common pleas introduced in lieu of the district court and the court of common pleas as we have it now, then I think every man who will look at the subject must be persuaded that we ought to have but one court of common pleas, and if we are to have a court of common pleas, do not let us have four or five or any other number beyond one, introducing, as it seems to me, confusion; a system under which any man attempting to practice would find himself constantly embarrassed, by being dragged first into one court and then into the other. I see no reason for having four courts when one would answer the purpose.

I do not intend to say any more on this subject except that I have not met with any gentlemen except those who have expressed their sentiments on this floor as favorable to this section, as applicable to Philadelphia, who were in favor of it, but on the other hand I have met a large number who condemned it as being exceedingly disadvantageous and unwise.

Mr. WOODWARD. Mr. President: When this subject came before the Judiciary Committee, of which I had the honor to be a member, it was strongly represented to that committee that the bar of Philadelphia desired the district court to be dispensed with, and those representations made an impression on my mind. I supposed they were correct, but subsequent

intercourse with judges and lawyers led me to doubt the correctness of that statement. The committee had a meeting in this room at which all the judges of the district court attended, and also some of the members of the bar spent an evening with us on this subject, and in listening to those gentlemen, I understood them all to be opposed to the abolition of the district court, and I believe now, from my intercourse with Philadelphia lawyers, that Mr. Newlin stated it very moderately when he said three-fourths of the bar of this city are opposed to the plan proposed by the Committee on the Judiciary. I think it is a very moderate statement to say three-fourths and those the most practical men at the bar, the men doing the largest business at the bar, with some exceptions. No gentleman can be produced whose opinion is entitled to more respect than Mr. Biddle, who has addressed the Convention, but he is almost alone, so far as I know, among the principal leading practitioners at this bar, who held those opinions. The gentlemen around me, and particularly the last gentleman who addressed you, (Mr. Bullitt,) have expressed much more truly the current opinion of the bench and the bar of Philadelphia, as I understand it, than Mr. Biddle has.

This conclusion of fact (because this is matter of fact) has been reached after long and careful investigation, from the best evidence which could be brought before it, and in my opinion it ought to decide this question. If there are any men on the face of the earth who know what is good for this vast community, on the matter of courts, it is the judges and the lawyers who are familiar with the administration of justice in this State. I say that, in my opinion, their judgment ought to decide this question. It has been the rule with me, and it was the rule all through in the report which I made as a minority from the judiciary committee. I maintained and retained the district court, because, as a matter of fact, I had satisfied myself that such would be the desire of the bar and the bench of the city of Philadelphia. I to-day have no doubt on this question, and the Convention should understand that if this report of the chairman of the Judiciary Committee is adopted, it will establish four courts here in Philadelphia and it will disappoint and disoblige the great body of the practitioners at this bar. Let nobody vote for it under the impression that he is do-

ing what the judges and lawyers of Philadelphia desire him to do. That will be found out soon enough if this is adopted.

But while I know very positively that the opinion of the bench and the bar of Philadelphia is against this four-headed court that is proposed by the Committee on the Judiciary, I have a difficulty in supporting the amendment offered by the gentleman before me (Mr. Dallas) because in his amendment he denies to the district court all equity powers. The Legislature of Pennsylvania have conferred upon that court, forced upon them—

Mr. BIDDLE. Re-conferred upon them.

Mr. WOODWARD. Re-conferred equity jurisdiction. When once they had conferred it and a bill was reported to the Legislature destroying it, the public demand compelled the Legislature to re-confer it, and the equity jurisdiction in that court now exists. When we look to this vast population, to the interests that are at stake in our courts of justice and the vast increase in equity practice in our courts, no man ought to deny that the judges of the district court ought to be the chancellors of this city. Almost all great questions that come before our courts now take that form. I suppose that there are ten thousand dollars of value litigated in forms of equity for every one that is litigated in forms of common law.

Mr. BIDDLE. That is certainly true.

Mr. WOODWARD. And this is growing, sir, I am sorry to say, very rapidly. I do not believe in this extravagant equity jurisdiction; but it is the fact, and we have to deal with it. It is growing every day; and now to commit that vast jurisdiction for this vast population to the judges of the common pleas alone is neither wise nor just.

With the court of *nisi prius* abolished and the judges of our common pleas very much occupied with criminal cases, the latter are to become the only chancellors, for this vast community. I cannot vote for the amendment of the gentleman from this city, (Mr. Dallas,) while it contains such an unreasonable provision as that. I told him that if he would strike that out I would vote for his amendment, because I think it is preferable to the report of the Committee on the Judiciary; but with that clause in it, which takes away the equity jurisdiction the district court now possesses, I cannot vote for the amendment. If some gentleman will move to strike

that out, I will vote for the amendment with great pleasure.

Mr. HANNA. If the gentleman from Philadelphia will give way, I will move that amendment.

Mr. WOODWARD. I will give way for that purpose with pleasure.

Mr. DALLAS. Will the gentleman allow me to make an explanation?

Mr. WOODWARD. Certainly.

Mr. DALLAS. My explanation is that at the time it was spoken of to abolish the district court, the matter was canvassed by some members of the bar and by the judges of both the district court and the court of common pleas. It was supposed that the two courts could be kept standing as they are now if the district court had all the common law trials and the court of common pleas had all the equity jurisdiction, but if you divide the equity jurisdiction between them there will not be enough left for the common pleas to do.

Mr. BIDDLE. That is a total mistake as far as the *nisi prius*—

Mr. DALLAS. I say that on the authority of the judges of both courts.

Mr. BIDDLE. I say the contrary on the authority of my own experience. It is utterly preposterous to make the statement that now, since the *nisi prius* is to be abolished, the court of common pleas can attend to the whole equity business of Philadelphia county.

Mr. DALLAS. I put the experience of the gentleman from Philadelphia against the experience of the bar of Philadelphia and all the judges.

Mr. HANNA. I move to amend the amendment by striking out in the first paragraph all after the word "present."

Mr. CASSIDY. I should like to say a word or two on the subject now before the House. I am wholly opposed to the section of the report of the Committee on the Judiciary now before us and trust that the section will not be adopted. I am willing to take the proposition of my colleague from Philadelphia (Mr. Dallas) if I cannot get any better; but my earnest desire is to so arrange this amendment as to let the courts be as they now are, and for many reasons. Among others, I am in favor of giving equity jurisdiction to the district court the same as to the common pleas, because I look upon the local courts as the nurseries from which the Supreme Court is hereafter to be supplied, and unless judges are to be trained in the lower courts in equity practice and in equity

learning, they will be unable to pass intelligently upon the most important business that can be brought before the appellate court. I am in favor of giving such jurisdiction to these courts as they now have in order in some degree not only to fit them for the proper discharge of their local duties, but to make the places of the local judges such training schools as will enable them to add lustre to the judiciary and reflect credit on the State.

The proposition that is made here seems to be based on the general doctrine that there must be a change in everything. Change is not always reform, and I confess, in my place here, that I am one of the few (if they be a few) who approach to lay hands on the judicial system of Pennsylvania with a great deal of hesitation. The judiciary has grown with the history of the State, has been tested in every way; its purity has never been questioned, its integrity never doubted, its ability never disputed. I say that I look upon it as something very near sacred, and that I will not put my hands on it unless the overwhelming demand of the people in the way of reform requires it, and I have listened in vain for the utterance of such a demand.

Upon what earthly reason is it that we are to change these courts? Nothing has been said except the symmetry of the system, and my friend from this city (Mr. Biddle) thinks there is no force in that, as there undoubtedly is not. If there be anything in it I have only to say I care not what names you call these courts; I do not care whether the district court of Philadelphia, as it is now constituted, shall be called the common pleas or not. I want simply the organization of the courts, the practice of the courts, the arrangement of the business of these courts, to be maintained as they now are.

Now, what is proposed by the Committee on the Judiciary in the place of these respected and tried courts? Why, it is to make four courts of concurrent jurisdiction, composed each of three judges, so that it will be in the power of these judges at any one time in the city of Philadelphia to have twelve courts running—three criminal courts, three judges sitting in equity, at different places, three judges sitting at different places to try civil issues, and three other judges scattered over the city exercising the various branches of the original jurisdiction committed to them. How can suitors or law-

yers give their personal attention in each one of these courts held at the same time? It has been said twittingly to our profession many and many a time that it is within the power of a lawyer to divide his client's estate, but I never could understand how he could divide himself sufficiently to practice in all these courts at one time; and yet that is exactly what this comes to.

And it involves another proposition which it seems to me will not bear the test of reason; and that is, it involves the creation of one office for its records, the prothonotary of one court, one chief officer. Think of it! In that office there are to be filed and regulated and docketed equity proceedings, common law forms, road-law matters, and the indictments, pleas and records of the criminal business of the county. What a conglomeration, and what a marvel must be the man who ever worthily fills this place; shall we ever look upon him?

But some of our friends have said there is a little merit in this proposition because it brings new blood or fresh judges into the criminal court. The terms of the criminal courts in this county are monthly; hence it brings one of these fresh judges there not quite thirty days in every year. I would like practitioners here to tell me how much criminal law a man in this time can acquire who never tried a criminal cause, and I doubt very much whether some of them ever read a book upon criminal law, and who never presided or sat in a criminal court. How much justice would such a man be able to administer according to law in an experience every year of thirty days—less than one year in his full term of ten years? It would work the most practical and rank injustice.

These are the thoughts that occur to me as I have hastily passed over this subject. But I desire to call the attention of this Convention to the fact that no one is asking for this. This is not a reform called for by the press or the people. It is not sought for by petition or asked for by bench or bar. On the contrary, all the papers that have been presented have been protests against it, and a large majority of the bar are prepared to-day to protest most earnestly against it. If the bench were to be considered at all in this thing, and I am very sorry they have been referred to at all, then my colleague (Mr. Simpson) has authorized me to say for this very district court, so of-

ten spoken of on this floor, that within an hour they were a unit for my proposition to allow our local courts to remain as they are now. It was told to this Convention in committee of the whole very decidedly by a gentleman whose absence from his seat at this time I very much regret that the judges want this. I say in addition to the authority of my colleague, for three of the judges of the district court whom I have had personal interviews with, that they are opposed to this present proposition, and I say for every judge of the common pleas that they are all opposed to it. Much more might be said, but I had the honor to submit some views on this subject when in committee of the whole, and in this heated period I forbear inflicting additional remarks. It only remains to say that the Philadelphia delegation in this Convention, in the proportion of eighteen out of twenty-two, earnestly protest against any interference with the courts of this city as now organized.

Will it be forced upon our people against their and our consent? If so what avails it that the representatives of the people present their views, and of what value all the talk that we are here in Convention to so organize the government that the real majority of the people shall be heard in the government?

Mr. ARMSTRONG. Mr. President: The gentleman who has just addressed the Convention regards the judicial system of Pennsylvania as so sacred that he would lay no hand upon it; and yet he is the author of the most monstrous proposition which has been made in any State of the Union, which is to allow an appeal on writ of error, as in civil cases, in every criminal proceeding, however trifling, tried before the courts. He proposes by the section he offered in committee of the whole by a single stroke to impose upon the judges this most onerous, oppressive and useless duty in violation of every precedent and the uniform practice of all the States and of England, from the institution of the judicial system till now.

Mr. HUNSICKER. Will the gentleman allow me to explain? The gentleman from Philadelphia (Mr. Cassidy) is not the author of that proposition. It belongs to me. [Laughter.]

Mr. ARMSTRONG. The gentlemen may divide it between them if they have any rivalries as to the honor of introducing it. [Laughter.] It is sufficient that it lies at the door of one of them.

Now, sir, let us look at the necessities for this change. The gentleman says that change is not reform. Admit it; no one has ever claimed that it is. He asserts there is no necessity. Let us see if he is correct. When the courts were organized in Philadelphia a single judge was quite sufficient—but as business increased the court grew from a single judge to three, and as population and business increased the courts began to expand, just as the necessities of business required additional judicial force. By such necessities the number of judges from time to time increased, till at last it was deemed expedient to supplement the common pleas of Philadelphia by establishing the district court. What is their condition now? The business of the city has so increased that there is an admitted necessity for additional judges. The business evidently requires more judicial force. The question is just now and here upon this Convention: How shall the judicial force be kept commensurate with the continued increase of business in this great city, without so increasing the number of judges as to render the courts cumbersome and inconvenient? If you divide them into two courts, common pleas and district court, and give them six judges each, you make an unwieldy court in both jurisdictions; you make the court too large for convenience in the transaction of business, too large for convenient consultation and too apt to be discordant in opinion. Then, again, there is danger in subjecting the courts to unreasonable legislative changes. The district court now is merely a legislative court and liable to whatever changes dissatisfied clients or counsel may induce the Legislature to make; and experience has shown that applications have come from Philadelphia repeatedly to the Legislature to change their courts, now conferring, and now taking away equity powers, as the dominant influence may chance to be.

Now, sir, by the system proposed in the present article a mode is introduced by which the increase of judicial force can be kept always on an equal footing with the increase of business. Three judges are enough for one court. The Supreme Court of Pennsylvania was once constituted with only three judges, first four, then three, and then five. When these organizations are complete the several courts of the city of Philadelphia will have each their separate jurisdiction complete in itself, and when the jurisdiction

of either of such courts has once attached it cannot be diverted except by change of venue as may be provided by law. These courts have been called by the gentleman from Philadelphia (Mr. Dallas) small courts by way of detracting from their importance; but how can a court composed of three judges and transacting the one-fourth of the business of Philadelphia be in any reasonable sense called a small court? It seems to me like an abuse of terms. The business of either of such courts will be quite sufficient to engage the attention of any three judges who may compose it.

But one gentleman from Philadelphia suggests that it ought to be a single court. If so, it would now consist of ten judges, to be increased to eleven or twelve or fifteen, or more, concurrent judges, and all constituting a single court! I can hardly imagine that such an organization could commend itself to any man as the best mode of organizing the courts of a great city. It will be a sort of convention operating by subordinate committees; I care not by what name it may be called, it would be in fact a sort of judicial mob. There is no proper organization of a court that can embrace so large a number where they are compelled to divide in the exercise of their common jurisdiction. Under such an organization we could not fail to find one judge undoing what another had done, or doing what another had refused.

There is then a necessity of organizing these courts upon a basis which shall make them constitutional courts to prevent unreasonable legislative changes and which will also organize them so that the courts themselves shall be capable of expansion with the increase of business, without disturbing the harmony of the system. I know no other mode of doing it than that which the article proposed embodies. The gentleman from Philadelphia again suggests that the whole number of judges be divided into two courts. But this would obviate no difficulty and be open to many serious objections; if you make them two courts of six judges each, the same difficulties would attach to it which the gentleman (Mr. Dallas) deprecates.

But, says another gentleman, how are members of the profession to practice the law where there are four courts? Why, sir, they practice now in three district courts, in one court of common pleas, and many of them in the criminal courts and in the United States court, circuit and

district, and in the court of *nisi prius*. These things are incident to the practice in any large city; it is a consequence of their large and condensed population. In all large cities lawyers do practice in half a dozen or a dozen courts, and do it without any serious inconvenience. Of course it subjects them to some personal inconvenience at times; but it never subjects the business of the courts to inconvenience, and we are here to consult the best interests of those courts in their relations to the business of the people and not what may, perchance, best promote the personal convenience of lawyers.

This system then is a necessity cast upon us by reason of the increase of business, and of the manifest propriety of so organizing these courts that no further increase of business necessitating an increased number of judges shall distort and disturb the judicial system of the State. We propose to harmonize the judiciary of the State in all its parts, in Allegheny and in Philadelphia, and elsewhere, that we may all be under the same judicial system, all the lawyers understanding its practice and the people understanding distinctly the course of judicial procedure which is to determine their rights. And, sir, this is not a local question. The increase of business in the State and the increased facility of intercourse by railroads and telegraphs that has so bound together the general business of the State, make this a State question and not a local question. Gentlemen from the country have much business to try in these courts, and a very large proportion of the business in them arises directly or indirectly out of their business relations and intercourse with the country. The people of the entire State are interested, and I repeat, sir, it is not a local question. We from the country have a right to say that your courts shall be organized upon a basis which shall harmonize with the judiciary of the State at large.

Then, again, it proposes a system by which the judgments of record shall all be in one place. I was told to-day that it requires seven distinct searches now in the city of Philadelphia before a title can be certified against incumbrances.

Mr. HANNA. There are only three of those court offices.

Mr. ARMSTRONG. If there are, as the gentleman says, only two or three, the argument still remains that it is better

that there should be but one, because it is easily practicable.

But it is said that these courts of co-ordinate jurisdiction may interfere with each other. The second section distinctly prohibits any such interference, and requires that when the jurisdiction once attaches it shall remain fixed and permanent in that court and cannot be taken away, except, as I have said, by a change of venue.

As to the position of the judges on this question, to which reference has been made, I may say that I have conferred with several of them, some of whom have called upon me on the question. I have letters now in my desk from lawyers of distinction in this city in favor of this plan. This very day I had occasion to go to the office of a lawyer of prominence in this city; I met three lawyers there; they were discussing this question, and two of them were decidedly in favor of this plan. But, sir, this mode of counting by suppositions and guesses of what other people do or do not think is not the way to settle a question of this importance. The district court judges, I believe, take the position that they would rather be let alone as district judges; in other words, that their courts shall not be changed. I understand them so to say; but I understand with equal distinctness that this Convention is determined that there shall not be a separate district court anywhere in the State, but that all shall come within the same rule and be within the powers and jurisdiction conferred upon the courts of common pleas. This being so, three of the judges of the district court have distinctly informed me, and two of them have written to me on the question, and I have their letters in which they say that if the district court is to be changed at all, they want the change to be made upon the basis of the report of the committee. They regard it as the most efficient, the most simple, and the best plan that has been suggested. I do not wish to misrepresent them, and I repeat they desire that the district court shall not be abolished, but if abolished they want the plan of the committee to stand.

There are other reasons for it. The administration of the criminal law in this city as the committee have reason to believe, has not been entirely satisfactory. It is not worth while to say why, nor do I fully know, but it was repeatedly represented to the committee that the admin-

istration of criminal law in this city required some change. The district judges do not object to participate in the criminal administration. So some of them have said to me. They do not object on that ground. The common pleas judges are now exercising every jurisdiction known to the law, whether criminal, in equity, or at law, and the judges of the district court, when required to exercise the same jurisdiction, can do it with equal facility and administer it with equal success and justice. Let those judges take the same range of judicial administration and judicial thought that the judges of the courts of common pleas take, and they will be found, all of them, exercising these functions of every kind with larger advantage to the State and with a better, more prompt and ready administration of justice for this city.

I believe that I have thus gone over, briefly, many of the points, which in my judgment ought to be conclusive on this question.

The amendment to the amendment which is now pending, if it were successful, would leave the amendment of the gentleman from Philadelphia (Mr. Dallas) to read simply thus: "In the city of Philadelphia the district court and the court of common pleas and the jurisdiction, powers and duties of said courts shall remain as at present;" that is to say, it would make them constitutional courts without power in the Legislature to change them even in their jurisdiction and powers. Certainly it cannot be the intention of this Convention to constitute a court which the Legislature has no means of controlling, either as to its jurisdiction or powers; and yet if the amendment proposed were adopted it would leave the courts cramped within the jurisdiction which they now exercise, and without power anywhere to modify its organization, either by adding to or taking from its jurisdiction.

Then the third paragraph of the proposed amendment requires that we should put it into the Constitution that the Legislature shall provide for the employment of phonographic reporters. I am opposed to putting that into the Constitution, even assuming it to be of any general necessity. It should be a legislative and not a constitutional requirement. There are many courts where it ought to be done and done promptly, and the courts of Philadelphia among them. The Legislature should do it; but we should not encumber the Con-

stitution with provisions of that kind which are so appropriately within the province of the Legislature.

This question was so fully debated when it was before the committee of the whole that I believe it is not necessary to discuss it further now. I regret exceedingly the absence of the gentleman from Philadelphia (Mr. Cuyler.) I understand his views on this question to be that he accepts the proposition as it stands reported from the committee, but prefers that the district court and the *nisi prius* (and he coupled them together) should both remain as they are, but both those courts are anomalies in our judicial administration and ought to be abolished. They both have been attached to the judiciary as temporary expedients, and now the gentleman would have us perpetuate them under the sanction of the Constitution. I believe the time has come to so establish the judiciary of Pennsylvania that it shall be a unit in its organization, and that we shall not allow any section of the State to engraft upon it anything which will disturb the harmony of its organization. I am not complaining of the administration of the courts under the district judges of Philadelphia, for I believe them to be wise and good judges and the law well administered; but it will be equally well administered and with much greater facility and in much greater harmony with the whole judicial system of the State when we have made them common pleas judges, exercising all the powers which appertain to the jurisdiction of all the other judges of the Commonwealth, and when we have so divided their jurisdiction that it may be by each court conveniently exercised with such distinct and separate jurisdiction as will make each court solely responsible for its own administration.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. HUNSICKER. I call for a division of the amendment.

The PRESIDENT *pro tem*. The pending question is on the amendment of the gentleman from Philadelphia (Mr. Hanna) to the amendment, which is not susceptible of division.

Mr. HUNSICKER. I referred to the other amendment.

Mr. HEVERIN. As a representative of the locality whose necessities are so tenderly recognized and specially contemplated by the provisions of the pending section, I desire to express not only my

own convictions but what I believe to be the unanimous wishes of the judiciary and the dominant sentiment of the legal profession of Philadelphia. And I do so without the hope of adding anything of virtue or effect to the remarks submitted by my colleague, (Mr. Cassidy,) indicating the objection of those directly interested to any interference with a system sanctioned by experience, endorsed by practice and endeared by beneficial results. I fully accord with the distinguished delegate from Philadelphia who has just taken his seat, (Mr. Biddle,) in the general abstractions which constituted the basis of his argument. I agree with him in his advocacy of the philosophy which discerns virtue and worth in a broader comprehension of all the questions which enter into the consideration of this subject. I am confident that the application of the principles elaborated by him would be in harmony with a perfect dispensation of justice, and would no doubt render the administration of criminal jurisprudence more secure against the evils anticipated.

But, Mr. President, his argument, though logical and convincing, is purely theoretical, and is directed at no existing evils requiring correction. It rather comprehends remote probabilities that may be fruitful of harm, and although ingenious, it is proffered simply in support of a questionable and dangerous experiment conceived for circumventing abuses not suffered but only apprehended. We cannot afford to introduce radical changes merely because we are apprehensive of wrong. We should not lay ruthless hands on any institution that has passed through the tests of protracted existence simply because we think, under anomalous circumstances, it may possibly become prostituted and demoralized.

My colleague (Mr. Cassidy) has well said that no one has ever complained of the *system* under which justice is administered in Philadelphia. What gentleman who defends the report of the committee can utter a complaint against our judicial system? What member in the wildest flights of a zealous advocacy can truthfully arraign the present organization of our courts? What single delegate among those who have expended their logic and rhetoric in opposition to this amendment can justify his position by the citation of a single reliable complaint or suspicion against the administration of justice under the present system? If

there ever were complaints they were not against the construction of courts, but such as would arise under any circumstances.

The chairman (Mr. Armstrong) of the committee who presented this report to the Convention informs us that there is very great complaint against the administration of justice in the criminal courts of our city. But I would like to ask that gentleman if the prevalence of those complaints were ever chargeable to the character or official demeanor of our judges? I challenge him or any other delegate to cite a circumstance or recall an incident responsible for such rumors or information that reflects upon the honesty or integrity of our common pleas judges. If the atmosphere surrounding the court of quarter sessions in this city is foul and obnoxious, neither the conduct of our judges or the construction of our courts have contributed to the contamination. But even if they *were* responsible for the information and suspicions that have reached the ears and captured the convictions of the chairman of the committee, how will this section afford the remedy? It does not remove the judges. It does not change the form of procedure. It does not restrict or reform the judicial mind. It simply provides that they shall preside over the criminal court but once instead of twice during the twelve months of the year, a deprivation that the common pleas judges would welcome rather than deprecate.

Mr. RUSSELL. I should like to ask the gentleman a question. I ask him whether he did not submit this proposition to the Judiciary Committee or to the Convention:

“Resolved, That the Committee on the Judiciary”——

Mr. HEVERIN. I will relieve the gentleman of the trouble of propounding any interrogatories in reference to that——

Mr. RUSSELL. “That the Committee on the Judiciary be instructed”——

Mr. HEVERIN. I anticipate the object which prompts the gentleman's interruption, and I will spare him the effort of further interrogation or arraignment, either by a perusal of or reference to the resolution that I introduced during the early sessions of the Convention. I admit that I am the author and mover of a resolution providing for the consolidation of the district court and the court of common pleas of this county, and as far as that is concerned, I am still a warm advocate of the principle which inspired and the ob-

ject which dictated the proposition, and this same principle and this same object underlie the argument of the gentleman from Philadelphia, (Mr. Biddle,) and the realization of this not only commends his remarks to me, but it testifies to the judiciousness that induced my original amendment. While the committee in their report have entertained the literal clause of my resolution, without providing for the preservation of the principle involved, or for the attainment of the benefits contemplated, they have also presented to us something far more objectionable than that which they sought to change. My project was intended to reduce the number of courts and to simplify legal proceeding by substituting one court for the two that now exist. But the report of the Judiciary Committee, while it abolishes the district court, gives us four separate and distinct courts in lieu thereof; and therefore, as the committee refused to regard the purpose of my resolution in diminishing the number of courts, I prefer the next best arrangement and the one most similar to my own proposition. As I preferred one court to two, so I now prefer two courts to four, and in doing so I am consistent with my original purpose as indicated in the records of the Convention.

Now, Mr. President, I do not think the trivial changes that will be accomplished by this innovation will justify the risk of an experiment so radical and hazardous. The unnecessary multiplication of courts of concurrent jurisdiction will inevitably inflict upon the profession an embarrassment and confusion in the prosecution of their business that cannot be atoned for by a realization of all the blessings which the votaries of this section anticipate and have predicted.

Instead of simplifying matters, instead of giving us one great court in which would be present all the elements so eloquently pleaded for by the gentleman from Philadelphia, (Mr. Biddle,) we have presented to us for adoption a provision contemplating a quartette of courts, attuned to monotonous legal harmony, with out the desirable variations in construction and jurisdiction that enable the office to be administered with economy in time, convenience to the profession, and under other and valuable facilities that can only exist under a wise classification of jurisdiction and a discriminating division of labor. And I hope the section proposing

such useless complications will be voted down.

Now, Mr. President, these are my reasons for endorsing the amendment offered by my friend from Philadelphia (Mr. Dallas.) First, that there is no complaint and no objection to the courts as they now exist, and that our judges do not want this change, and I think every member from the city of Philadelphia, with the exception, probably, of two or three, will corroborate me in saying that it will not be popular to the bar, and I do hope that this Convention, as this report, or rather as this provision of it, concerns the city of Philadelphia alone, will vote down the section. The chairman of this committee says this is not a local question, but one which applies to the whole Commonwealth; but I beg to differ with him there, for, although the country members may have an interest in the transaction of business in our courts, they can come here and be accommodated at any time, whether we have a dozen courts or one court, but it does specially concern the members of the bar and the judges of the city of Philadelphia, as it comprehends their time and their convenience, and it can only interest country members so far as they may have business in the city courts, and I say that can be transacted as well under one court as four courts or two courts, and I hope this Convention will reject the report and will adopt the amendment offered by my colleague, (Mr. Dallas,) and thus show to our constituents that although we may favor the most radical changes in other institutions of our government, we will not without much reluctance, careful consideration and the most positive assurance of salutary results, assail those which a cherished tradition and venerable age have consecrated to the ardent appreciation of grateful devotees.

Mr. TEMPLE. Mr. President: After the very long debate which has taken place upon this amendment, I feel loth to say anything upon this subject; but I cannot agree with some of the delegates who have supported the amendment of the delegate from Philadelphia (Mr. Dallas.) The principal argument in favor of this section seems to be that it is an innovation upon the old Constitution; that to abolish the district court or to do away with it in the city of Philadelphia is an entirely new experiment, and that we are branching out into a mode of judicial procedure and establishing courts which have been

heretofore unknown in Pennsylvania. I submit that in the Constitution of 1838, as also in the Constitution prior to that, there was nothing said about district courts. Up to 1849 there was no such thing known in the city and county of Philadelphia as a district court. Therefore it seems to me that the objection on that ground is altogether valueless and not worth considering. The old Constitution provides that the judiciary in this Commonwealth shall consist of the Supreme Court, the courts of oyer and terminer and quarter sessions, and the courts of common pleas.

Why are gentlemen fastidious now on account of the district court? Did they see proper to say anything about it when the district court for the city and county of Allegheny was wiped out? Were there gentlemen on this floor from the city of Pittsburgh who came here and said that the people of Allegheny county wanted their district court to remain as it is and as it has been? There was no such argument here in regard to the district court of Allegheny county. Where is the delegate on this floor who is to justify the legislative court for the county of Schuylkill? By the remaining provisions of this article, these district courts all over the Commonwealth have been abolished, and the report of the Committee on the Judiciary furnished us with a judicial system for the State of Pennsylvania which is uniform all over the State.

But it is argued that the judiciary of Philadelphia and the members of the bar of Philadelphia desire a continuance of this court. I am not here authorized to speak for the judiciary of Philadelphia, but I am willing to say to the delegates upon this floor that I am as well authorized to speak for some of the judges, both of the court of common pleas and of the district court of the city and county of Philadelphia, as other delegates are, some of whom have said to me personally that they believed it would be an improvement in the judiciary of the State, if the courts of Philadelphia were to be appointed in such a manner as has been referred to by the resolution offered by the delegate from Philadelphia (Mr. Heverin.) They have declared to me that they are in favor of such a combination of the courts.

Mr. CASSIDY. If I may interrupt the gentleman, I should like to ask the names of those judges?

Mr. TEMPLE. I did not interrupt you when you were speaking.

Mr. CASSIDY. I ask you for your names.

Mr. TEMPLE. I do not desire to be interrupted.

I say that prior to the introduction of the resolution which was referred to a few moments ago, there was a resolution prepared at the suggestion of one of the judges of our courts, embodying the same principle which is suggested and sought to be incorporated in this Constitution. And suppose the judges do desire that these courts shall remain as they are, is that any reason why we should establish a constitutional court heretofore unknown to the people of Pennsylvania? The people of Philadelphia are interested in the judicial system of our county. It has been argued, and very elaborately and eloquently argued, by one delegate, Mr. Cassidy, that the judges of the local courts should be so trained and educated that when they are elevated to the highest court of our State they should be fitted for this position, and in the very next breath he told us that he is desirous of maintaining the district court, a court which knows nothing at all about the criminal practice of our State. Yet he undertakes to argue to this Convention that a judge who is only educated and trained in the judicial practice of the district court of Philadelphia is a proper judge to place on the Supreme Court bench. Are there not grave questions of criminal law now submitted to the Supreme Court? Are not the highest interests of the citizens of the State of Pennsylvania, of a criminal character, brought before the Supreme Court of Pennsylvania, interests with which no experience in the district court has made the judges of that tribunal familiar? Look at the great questions that arise in the settlement of decedents' estates, in the contests upon elections, and other matters unknown to the district court. These are all questions of which the district judges are presumed, and repeatedly presumed by the argument of some gentlemen on this floor, to know nothing at all; and yet these are the judges who are to be educated and fostered above all others to make them judges of the Supreme Court! I believe that such an argument as that ought to have no weight with this Convention, and I trust that it will have none.

Again, it is argued that by the adoption of the report of the committee we shall have four judges to a court and we shall have a dozen courts sitting in the city of

Philadelphia at the same time. Let us see how that is. We have all heard the argument of the gentleman from Philadelphia (Mr. Hanna) in reference to this. We have at the same time been told by him that there are now three district courts sitting in this city, besides the court in banc. We have often two criminal courts sitting besides the court of common pleas; and so we have more courts sitting in Philadelphia now than we shall have under the new system of courts of common pleas if that system be adopted. Will that make the system more complicated? Will any gentleman stand up, as did the distinguished gentleman from Philadelphia, (Mr. Bullitt,) and say that he would not know in what court to proceed with a case, nor before what judge to bring it? The plan proposed by this section places the gentleman at home in any court he chooses to go to. So much for that argument.

I will not speak of that which has been so eloquently and so truthfully referred to by the gentleman from Philadelphia (Mr. Biddle) and also by the chairman of the Committee on the Judiciary (Mr. Armstrong.) I simply rose to say that there is truth in every word uttered by both of those delegates. I merely want to bring these judges together, to bring the judges of the district court into the court of common pleas and give them co-ordinate jurisdiction with the courts of common pleas and allow them to be learned in the holding of the criminal courts; and if you do that you at once purify and dignify the practice of that court.

Mr. MACCONNELL. I hope if the delegates from Philadelphia have any more arguments to offer upon the subject that they will consult the convenience of the members of the Convention by referring to the debates containing their speeches on this same subject before the committee of the whole. It is hardly worth while to repeat them.

I am opposed to this amendment, because it just exactly says to Allegheny county that it may go to thunder. The section as adopted by the committee of the whole does not apply, as the gentlemen from Philadelphia seem to think, exclusively to Philadelphia. It applies equally to Allegheny county; and our friend from Philadelphia (Mr. Dallas) offers an amendment that ignores Allegheny county altogether, that leaves it out in the cold, and we are asked that the Convention shall follow him in that. It

just says to Allegheny county, you are so miserable, insignificant and worthless a thing that we will pay no attention to you; we will take care of Philadelphia.

Mr. HAY. Is it not that Allegheny county can take care of itself?

Mr. MACCONNELL. I agree that she can, unless you tie her hands by a constitutional provision.

But, Mr. President, we have reported here, not from the Committee on the Judiciary, as gentlemen talk, but from the committee of the whole, after mature deliberation, after full and ample discussion, a judicial system that is symmetrical, full and complete. It cannot, in my opinion, be improved; and now it is asked that we shall break in upon it in every section, that we shall destroy its symmetry, that we shall strike it down and build up something else in its place; that we shall ignore it; scout everything that we have done and begin anew. Now, I appeal to members, can we afford to do that? After having spent the time that we have, and after having got into this warm term as we have, can we afford to do it? Would it not be better for us to go on and preserve the symmetry that we have managed, and managed with a great deal of skill, to put together in this report of the committee of the whole, go on and preserve it by just adopting it section by section? That is all I have got to say.

Mr. HANNA. In order that a vote may be taken on the amendment of my colleague, (Mr. Dallas,) I withdraw the amendment I offered.

The PRESIDENT *pro tem*. The amendment to the amendment is withdrawn. The question recurs on the amendment of the delegate from the city (Mr. Dallas.)

Mr. HAY. I have but one word to say, and that is called forth by the remark made by my colleague from Allegheny, (Mr. MacConnell,) with regard to the amendment offered by the delegate from Philadelphia, (Mr. Dallas,) not containing any reference to Allegheny county. Of course, I suppose that omission was made because the delegate from Philadelphia supposed that the county of Allegheny could take care of her own interests, and I have no doubt as long as she is represented by such lawyers as he who was last on the floor she will be abundantly able to do that.

I desire also to say that I have an amendment prepared to make the proposition of the gentleman from Philadel-

phia applicable to the county of Allegheny because of his omission. I do not see any necessity for opposing the amendment merely because it fails to include the county which that delegate does not particularly represent.

Mr. HUNSICKER. I call for a division of the question on the amendment so as to take it by paragraphs.

Mr. LITTLETON. How can there be a division?

Mr. BIDDLE. I do not see how it can be divided.

Mr. MACVEAGH. Let the first division end with the words "as at present."

The PRESIDENT *pro tem*. At the words "as at present" a division can occur. The first division will be read.

The CLERK. It is proposed to vote first on these words:

"In the city of Philadelphia the district court and the court of common pleas, and the jurisdiction, powers and duties of said courts, shall remain as at present."

The first division was rejected, there being, on a division, ayes twenty-two, not a majority of a quorum.

The PRESIDENT *pro tem*. The second division will be read.

Mr. DALLAS. I withdraw the second division, if I am permitted to do so.

The PRESIDENT *pro tem*. The third division will be read.

Mr. DALLAS. I withdraw all for the present if it is understood that I may reoffer the item relating to phonographic reporters hereafter.

The PRESIDENT *pro tem*. The amendment is withdrawn.

Mr. DALLAS. I now move to strike out all after the word "section" and insert:

"In the city of Philadelphia all the jurisdiction and powers now vested in the district court and in the court of common pleas in said city shall hereafter be vested in one court of common pleas, composed of twelve judges, and divided into four divisions of three judges each; which said divisions shall, so far as is consistent with the following provisions, be each a distinct and separate court for all purposes other than those for which it is hereinafter provided that the said court shall act collectively:

"1st. The said several divisions shall have equal and co-ordinate jurisdiction, and shall be respectively distinguished as court of common pleas number one, number two, number three and number

four; and the number of said divisions may be from time to time increased, and the election of judges for such additional divisions be provided for by law, and such new divisions shall be part of the same court and be distinguished by successive numbers.

"2nd. Each of said divisions shall have exclusive jurisdiction of all proceedings at law and in equity to which the jurisdiction of such division shall have once attached, subject to removal from any one to any other of said divisions for such causes and in such manner as may be prescribed by law; but all proceedings at law and in equity shall be commenced in said court of common pleas as one court, and without regard to the divisions thereof; and the assignment and distribution of the proceedings so commenced to and amongst the said several divisions shall be made in accordance with such general rules upon the subject as the said court may from time to time adopt; and upon assignment of any proceedings at law or in equity to any of said divisions in accordance with said general rules, the jurisdiction of such division shall immediately attach thereto. Said court sitting collectively shall, from time to time, make such rules and orders for regulating its practice and business and that of its several divisions as to said court may seem proper, said rules and orders to have the same force as rules of court in other cases; and the said court sitting collectively shall, from time to time, detail one or more of its judges, in turn, to hold the criminal courts of said district, and shall also, from time to time, detail one judge from each division of said court to sit in banc, who, while so sitting, shall exclusively exercise all the powers and jurisdiction of said court for further examination on review of all proceedings, civil and criminal, which shall have been previously brought before said court or any division thereof, and shall perform such other duties and jurisdiction of said courts (not including trial by jury) as said courts may by general rules prescribe. The judgment of said judges, or a majority of them, when so sitting in banc, shall have the force and effect of judgments of the entire court, but no judge shall have a voice in determining any judgment in review of his own decision.

"There shall be but one prothonotary's office and one prothonotary for said court, who, with such assistants as the court may deem necessary, shall be appointed by

the judges thereof, and subject to removal by them.

Mr. BEEBE. Before the gentleman from Philadelphia proceeds I should like to inquire whether this is in print.

Mr. DALLAS. No, sir, it is not.

I do not ask, Mr. President, to be heard for the city of Philadelphia. I ask a Convention of delegates elected by the Commonwealth of Pennsylvania to hear me upon a subject that especially interests nearly one million of its population.

The amendment which I offered before, and which was the report of two out of three of the delegates from the city of Philadelphia, who had the honor to be members of the Committee on the Judiciary, has been voted down. That amendment referred only to the city of Philadelphia. The amendment which I have now the honor to offer refers also only to the city of Philadelphia. I offer it because in my humble judgment, as a citizen of Philadelphia and as a member of its bar, I believe sincerely that the report of the Judiciary Committee is the worst possible system of courts that you could give us for the city of Philadelphia. I offered the first as the agreed sentiment, as I supposed and still believe, of the entire bench of Philadelphia and of twenty out of the twenty-four of its delegates upon this floor. But the Convention here preferred not to give us that amendment. Now, I have tried to draft one which, in my judgment, will be free from the objections to the report as it applies to Philadelphia and which, if adopted, will give us a reasonable judicial system for this city.

The report of the Judiciary Committee provides for four separate courts of common pleas in this county. The amendment that has been voted down provided for the retention, with some change in their respective jurisdictions, of the district court and the court of common pleas, and I offered and advocated it because I prefer two courts with entirely distinct jurisdictions to four courts of precisely identical jurisdictions. The principal and the strongest objection offered to that amendment was that it proposed to make for the city of Philadelphia a system somewhat different from that which prevails throughout the Commonwealth of Pennsylvania.

Now, sir, I have tried to meet and overcome that objection in the amendment now before us. I have tried, while cor-

recting what I supposed to be the errors in the report of the Committee on the Judiciary, to make the amendment that I have now offered not open to the objection that it differs from the system throughout the State, certainly no more so than does the report of the majority of that committee itself. The report of the majority provides for four courts of common pleas. Let any delegate upon this floor, Mr. President, show me any other county or district in this Commonwealth that will have four courts of common pleas. The amendment that I offer proposes one court of common pleas for the county of Philadelphia, the difference being this: That while the report of the majority of the committee recognizes the necessity in Philadelphia for twelve judges, more than is required in any other county or district, it gives her four separate courts of three judges each, while the amendment which I have offered proposes to give her one court of twelve judges, distributed into four divisions; and this necessary division of the court for transaction of business is the only difference which I propose between the Philadelphia system and that of the rest of the State.

Mr. President, the report of the committee would give us four separate courts, and more, as needed, and is open, in consequence, to all the objections which I formerly stated. Under the report of the committee we would have four courts capable of indefinite increase, covering the same territory, population, and jurisdiction, making different decisions upon different subjects. I propose to bring them all within one court, so that when a decision is made in any division the court in banc, sitting as one court, may, under the judgment of the whole court, establish one known local law as to Philadelphia for all its citizens and within all its jurisdiction. This is what you have in every other county and every district in the State, and it is what we have a right to ask for here.

It does not do to reply that the same number of population throughout the State have different courts, and therefore may encounter conflicting decisions, because you will observe that we are here one compact community. Every merchant, every business man, must bring his suit within the city of Philadelphia if his business and residence is here, and he has a right to expect that whether he brings his suit in one court or another within

this county, the decision will be the same and governed by the same rules.

I would take the twelve judges which the majority report accords to us, and put them into a single court. I do not think it is right that every man who brings his suit should select his court. I think that so far from that being a blessing, it is an unmixed and a gross evil. I think that it is of the first importance that counsel should advise their clients upon the law and not upon what they suppose to be the idiosyncracies of judges; and, therefore, that they should not know what judge was going to try their case, but that they should bring their cause with the certainty that it would be decided in accordance with the decisions they had before known to be rendered; hence I would have but one court and not four courts, from which suitors could select.

My amendment provides that every suit in equity or at common law shall be brought here as in the rest of the Commonwealth, simply in the court of common pleas, and not in any particular court of common pleas, as the committee's report would require. Why, sir, the report of the Committee on the Judiciary, so far from avoiding the objection which its chairman stated to my prior amendment, is much more subject to it. So far from enabling counsel anywhere in the State to bring suit within the city of Philadelphia just as it might be brought in any other county, he requires that it shall be brought either in court No. 1, court No. 2, court No. 3, court No. 4, and so on indefinitely; whereas, the amendment that I propose says to all the citizens of this Commonwealth, "bring your suit in Philadelphia as you do elsewhere, in the court of common pleas;" the provision being that "each of said divisions shall have exclusive jurisdiction of all proceedings at law and in equity to which the jurisdiction of such division shall at once attach"—meaning by that that one division shall not make a decision which another division may afterwards reverse—"subject to removal from any one to any other of said divisions for such causes and in such manner as may be prescribed by law; but all proceedings at law and in equity shall be commenced in said court of common pleas as one court and without regard to the divisions thereof; and the assignment and distribution of the proceedings so commenced to and amongst the said several divisions shall be made in accordance with such general

rules upon the subject as the said court may from time to time adopt; and upon the assignment of any proceeding at law or in equity to any of said divisions in accordance with such general rules, the jurisdiction of such division shall immediately attach thereto."

Now, then, you would bring your suit simply in the court of common pleas, and not in one of several courts, and a rule of court would prescribe in which division that case should be in the first instance disposed of. We have that system existing in the county of Philadelphia now. We bring our suits in the district court of Philadelphia, and no practitioner is permitted to know, and so far as I know, no practitioner ever does know in which of four divisions of the court his case is to be tried, or before which of five judges his cause is to be heard. I propose simply to extend that principle, so that hereafter instead of two courts organized upon that principle, we shall have but one, so that our cases shall be brought and our bills in equity be filed simply in the court of common pleas.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. LILLY. I can hardly suppose that the gentleman who has just taken his seat intends to press this amendment upon the Convention with any expectation of carrying it. It may be sensible and may be right and proper; but at this late day of the session, when we are about to take a vote on the section, when the gentleman rises and offers an amendment in manuscript that covers almost as much paper as the whole report of the Judiciary Committee, and that manuscript held by himself, I can hardly think he really expects to have a serious vote upon it.

Mr. DALLAS. Will the gentleman allow me to explain?

Mr. LILLY. Certainly.

Mr. DALLAS. I will state that I had this proposition in print, and would have presented it in committee of the whole but for the fact, notwithstanding the statement of the gentleman from Philadelphia (Mr. Campbell) that I was not here when this matter was considered in committee of the whole, and when I had my only printed copy on my desk this morning it was carried away. I hope, if the difficulty is the want of printed copies, I shall be allowed time to print; for I desire to say to this Convention that I believe I represent what the bar and people of Philadelphia

want, and they are making a mistake against 150,000 voters in refusing to hear this proposition.

Mr. ARMSTRONG. I only desire to make a single remark. This proposition was in print and was considered by the Judiciary Committee. If it was not submitted in committee of the whole, which I cannot now state, it was unfortunate. But it is a plan which proposes to make one court with subordinate committees. That is about the smallest interpretation of it. I do not propose to enter into any discussion upon it.

Mr. BIDDLE. I have only a single remark to make in regard to this subject. It can hardly be supposed that this Convention will believe that the amendment offered in the morning session by the gentleman from Philadelphia, who has just taken his seat, had the almost unanimous recommendation of the bench and of the bar of this city, and that the present project has the same recommendation, for they are as wide asunder as the poles. The present project gives criminal jurisdiction, gives equity jurisdiction, gives road jurisdiction, gives every jurisdiction known to our joint systems of law and equity, to all the courts; and if the unanimous desire of the bench and the bar is to keep the courts separate, how my distinguished friend can get up and say, in behalf of the citizens of Philadelphia, that this present project meets their views exactly, I cannot understand.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Dallas.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the fifth section.

Mr. T. H. B. PATTERSON. One word. Some of the members who have spoken with regard to the city of Philadelphia have said that Allegheny county did not object to this section. Now I say that Allegheny county does not ask for the adoption of this section. On the contrary, all that Allegheny county wants with regard to the judiciary is to be let alone as she is now. As far as I know the sentiment of the leading members of the bar and the general sentiment of the bench in our county, it is that it is best to leave that alone which is not doing any serious damage, and as there is no great reason for any change in our judicial system, that it is best to leave it as it is now constituted. I merely give that as my opinion of the

wishes of the leading members of the bench and the bar of our county, and according to that I shall vote against this section and hope it will be voted down.

Mr. HUNSICKER. I simply desire to say one word against this section—

Mr. MACCONNELL. I will inquire whether the gentleman has not spoken already on this subject?

The PRESIDENT *pro tem*. Not on this question.

Mr. HUNSICKER. If the gentleman from Allegheny desires to make a speech I will yield to him.

The PRESIDENT *pro tem*. The delegate from Montgomery will proceed.

Mr. HUNSICKER. I only desire to say that, as I understand this section, it fixes irrevocably by the Constitution a judicial system for Philadelphia, for in the fifteenth line these words occur: "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." I do not believe that there has been any demand by the public for the abolition of the present judicial system prevailing in the counties of Philadelphia and Allegheny, and for that reason I shall vote against this section.

Mr. CORSON. I supposed this to be a Philadelphia difficulty to be settled by the delegates from this city; but if it be a free fight I desire to say that gentlemen will do well to adopt the report of the committee, for the distinguished lawyers who directly represent Philadelphia here are divided and cannot agree. I submit, therefore, to my country colleagues that it is the part of wisdom in us to take the verdict of the distinguished juror-jurists who compose the Judiciary Committee, and adopt it as the law on this question, especially as it comports more nearly than the amendment with the judicial system throughout the Commonwealth.

The PRESIDENT *pro tem*. The question is on the adoption of the fifth section.

Mr. HANNA. On that question I ask for the yeas and nays.

Mr. WORRELL. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Barclay, Beebe, Biddle, Bowman, Boyd, Broomall, Brown, Calvin, Campbell, Corbett, Corson, Cronmiller, Curry, De France, Elliott, Fulton,

Guthrie, Hall, Hay, Hazzard, Hemphill, Landis, Lilly, MacConnell, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Purman, Purviance, Sam'l A., Reed, Andrew, Reynolds, Russell, Sharpe, Struthers, Temple and Wright—44.

N A Y S .

Messrs. Bailey, (Huntingdon,) Bardsley, Black, Charles A., Black, J. S., Bullitt, Cassidy, Church, Curtin, Dallas, Darlington, Edwards, Gibson, Hanna, Heverin, Horton, Hunsicker, Kaine, Knight, Lawrence, Lear, Littleton, M'CLean, Mann, Newlin, Niles, Patterson, T. H. B., Read, John R., Rooke, Ross, Stanton, Walker, Wetherill, Jno. Price, Wherry and Worrell—34.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bannan, Bartholomew, Bigler, Brodhead, Buckalew, Carey, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Finney, Funck, Gilpin, Green, Harvey, Howard, Lambertson, Long, MacVeagh, M'Camant, M'Culloch, M' Murray, Mantor, Metzger, Parsons, Porter, Pughe, Purviance, John N., Runk, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—55.

The next section was 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. ARMSTRONG. I move to amend, in the third line, by striking out the words "hereinafter provided" and inserting "may be provided by law."

The amendment was agreed to.

The section as amended was agreed to.

The next section was read 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, 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 dockets, which shall contain the judgments and liens of all the said courts as are or may be directed by law.

Mr. S. A. PURVIANCE. I move to amend, by striking out in the second and third lines "to be appointed by the judges of said courts and to," and in lieu thereof to insert the words "who shall," so as to make it read:

"For the city of Philadelphia there shall be one prothonotary's office and one prothonotary for all said courts, who shall hold office for three years."

Mr. LITTLETON. Mr. President: I trust that that amendment will not be adopted. I think this matter was discussed most thoroughly at the proper time; and for the reasons then given, which were satisfactory at that time, I trust that the section at least in this respect as reported will be adopted. It is hardly worth while for me to detain the Convention by giving reasons why this should be done; but I do think that the courts of justice, having the power and jurisdiction which we have conferred upon these, should at least have the poor privilege of selecting the chief officer to enter their decrees.

Mr. S. A. PURVIANCE. I am induced to offer this amendment for several reasons. One is that the report of the Committee on County, Township and Borough Officers, which report has passed second reading in this Convention, makes a general provision for the election of all county officers, including prothonotaries. Now what is the reason why we shall make this exception in reference to the city of Philadelphia? Why shall we confer upon the judges of Philadelphia a duty excessively unpleasant and one which every man must admit drags them into the slough of politics, for, as a matter of course, amongst numerous aspirants, as there will be in the city of Philadelphia, containing a population of nearly seven hundred thousand, the judges will be courted; these twelve judges will be subject to innumerable bantering (?) from time to time until they make the selection. I do think it is the exercise of the most dangerous power that could be vested in the judiciary of the Commonwealth.

Mr. ARMSTRONG. This question was very carefully considered, and Philadelphia was made an exception by what seemed to be almost the unanimous de-

sire of the representatives of Philadelphia on this floor. The same concession would have been made to Pittsburgh if her delegates so desired, which was for them to elect. This is the only exception in the State; and there seems to be good reason for it, and it was the judgment of the committee of the whole upon full argument of the case.

The PRESIDENT *pro tem.* The question is on the amendment.

Mr. S. A. PURVIANCE. On that I call for the yeas and nays.

The PRESIDENT *pro tem.* Is the call sustained?

More than ten members rose.

The PRESIDENT *pro tem.* The call is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Alricks, Beebe, Campbell, Corson, Edwards, Ewing, Fulton, Guthrie, Hay, Knight, Lawrence, Lear, MacConnell, Mann, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Ross, Stanton, Struthers and Walker—22.

N A Y S .

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bardsley, Biddle, Black, Charles A., Black, J. S., Bowman, Boyd, Broomall, Brown, Bullitt, Calvin, Cassidy, Church, Cronmiller, Curry, Curtin, Darlington, De France, Elliott, Gibson, Hall, Hanna, Hazard, Hemphill, Heverin, Horton, Hunsicker, Kaine, Landis, Lilly, Littleton, M'Clean, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Patton, Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Temple, Wetherill, Jno. Price, Wherry, Worrell and Wright—53.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bannan, Bartholomew, Brodhead, Bigler, Buckalew, Carey, Carter, Clark, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Davis, Dodd, Dunning, Ellis, Fell, Finney, Funck, Gilpin, Green, Harvey, Howard, Lamberton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Mott, Newlin, Parsons, Porter, Pughe, Purviance, John N., Runk, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N.,

White, Harry, White, J. W. F., Woodward and Meredith, *President*—58.

The PRESIDENT *pro tem.* The question is on the section.

The section was agreed to.

The PRESIDENT *pro tem.* The eighth section will be read.

The CLERK read 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. EWING. I would like to call the attention of the chairman of the Committee on the Judiciary to a question connected with this section. We have already provided that there shall be courts of common pleas in Philadelphia and Allegheny, in Philadelphia four, in Allegheny two. Now, in this section it is proposed to provide that these courts shall, in some manner to be provided by law, attain the power to hold the criminal courts of the county. What is to become of the quarter sessions business, a large amount of which is not criminal—roads, election cases and the large amount of business known in our county, and I presume in Philadelphia county, as the miscellaneous business of the quarter sessions court? Which branch of the common pleas is to have the jurisdiction of that business? I do not think it is provided for, and it is likely to give rise to trouble. I call the attention of the chairman of the Committee on the Judiciary to that.

Mr. ARMSTRONG. I think there is no difficulty about it. It is certainly under the power of the law. If the gentleman has any amendment to suggest that will improve the section, the Convention will doubtless be very glad to hear it. I do not think of any amendment which will meet it, and I do not think there is any necessity for it.

Mr. EWING. I am satisfied there will be trouble about it.

The section was agreed to.

The PRESIDENT *pro tem.* The ninth 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 of-

fenders 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.

The section was agreed to.

The PRESIDENT *pro tem.* The tenth section will be read.

The CLERK read as follows:

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 was a proper one for review.

Mr. ARMSTRONG. I move to amend, by striking out the words "criminal case," in the first line, and inserting "capital case," and adding "in such other criminal cases as may be authorized by law." The clause as amended will read: "In every capital case and in such criminal cases as may be authorized by law."

Mr. HUNSICKER. Mr. President: We had fair notice from the chairman of the Judiciary Committee that this section was a monstrous innovation, and we expected him to oppose it in every possible shape; but I had no idea that he would make a covert attack upon this section. This amendment is a flank movement against it. He proposes to incorporate into the Constitution that which now exists as the law, because now by an act of Assembly every capital case can be reviewed as a matter of right. The section as it stands means to go a step further in the same direction and to make every criminal case reviewable as a matter of right, not as a matter of grace.

Let me here apply to the gentleman from Lycoming (Mr. Armstrong) the same argument that he has been applying to us, viz: That when the section was under consideration before, it was fully discussed and fairly decided.

The committee of the whole, by the largest vote, incorporated this section into this article, and what does it propose to do? It simply proposes that a man who is tried for a crime shall have it in his power to require the judge who tries him to take down his offer of testimony, and if he rules it out to give him an exception to that ruling; or if he receives testimony he can be required to take down the offer

of testimony, and if he receives it illegally or receives it after the exception on the part of the defendant, and the case is determined by the reception of that testimony—when all that is done and the judgment of the law is pronounced, the accused shall have the privilege, nay the right, of carrying his case to the court of last resort to see whether he has been tried according to law. In other words, it proposes to secure the liberty and the reputation of the citizen, instead of his miserable contemptible dollars.

When King Lear, stung to insanity by the ingratitude of his daughters, imagined himself a judge, he in a breath declared what is as true to-day as it was then. He said:

"Through tattered clothes small vices do appear;
Robes and furred gowns hide all. Plate sin with gold,
And the strong lance of justice hurtless breaks;
Arm it in rags, a pigmy's straw doth pierce it"

And that is the condition to-day.

These gentlemen who have never commenced from the foundation of the profession, who have been wafted into practice in higher courts, have no sympathy with those of us who have commenced at the bottom of the professional ladder and have been climbing our way up by our own exertions. We know wh it is to go before a single judge, who can lay down the law just as he pleases, restrained by no power. He can exclude your testimony, or he can admit it. He can send a man to the penitentiary with his reputation blackened. He can destroy that which is dearer to him than his life; he can destroy his reputation, and disgrace his family forever, and there is no power in the law as it stands to-day that will allow this man to have his reputation restored by the court of last resort.

Is not that true? What man will deny the proposition? It is astonishing to me, when everybody else is advancing, when everybody else is progressing, when we are improving the conditions of our penal code, when we are throwing the shield of protection around the innocent, that this section should not be unanimously agreed upon. In England, we are told, and I state this as I have been credibly informed, (not of my own knowledge,) that to-day every man can carry his case up to the highest court, even to the House of Lords. He takes it, it is true, by a legal fiction, by the relation of the Attorney General, but the Chief Justice

of England has declared that where the Attorney General refuses to issue the writ the court will compel him to do it, and I read with the greatest pleasure from Clarke and Finnelli's House of Lords cases of a case in which a poor criminal came before the House of Lords without counsel, without money, and without any person to defend him, and they assigned him one of the ablest counsel in the kingdom to re-argue his case, and after argument they reversed the proceedings, and sent him back for a new trial.

But it is said "you are loading down the Supreme Court." Yet the same gentlemen who make that argument were eloquent when the judiciary report was before the committee of the whole in protesting that you should not cut down the poor man's rights; that in a case involving \$5 34 he should have a right to be heard by the court of last resort.

For the sake of the miserable dollars which any man can earn in two days, he is to have the constitutional right of noting exceptions to testimony, of taking down the exceptions, of noting them carefully, and have the case proceeded with according to all the forms and limitations of the law, with a bill of exceptions to the charge of the judge. But on the other hand, when the distinguished gentleman who is chairman of the Committee on the Judiciary is tried for larceny, it may be, or for arson, or for theft, or for any other crime which would blacken his reputation and send him to a dishonored grave, he is to come before a single judge of his district and there submit his all to the judgment of the one judge.

I made an illustration of this question when it was before this House upon a former occasion, and it is an illustration that will bear repetition. It was the case of a judge who put a witness on the stand and compelled her to testify in violation of the Constitution of the United States and of this State, and by means of that judicial outlawry produced a conviction that sent to jail the victim of his malice, a man who never could have been convicted if he had been tried according to law. And now we are to be scared from our propriety, and this section is to be voted down by a covert attack in the rear. Fight it like men; call the yeas and nays upon the section, and let us see who in this Convention value dollars beyond liberty and reputation.

MR. H. W. PALMER. There are several objections to this section. Under it every

assault and battery, every breach of the peace, every fornication and bastardy case can get to the Supreme Court. Of course, there would be no good in taking an indictment either on a *certiorari* or by a writ of error. In order to make the section operative, there must be a bill of exceptions to the testimony, and it must become imperative to take down the testimony in every criminal case. There would not be days enough in the year in many counties of this Commonwealth to try the criminal cases if the testimony is required to be written down and if exceptions can be taken thereto. There would not be days enough in the year for the Supreme Court to pass upon these cases if they are to go there, and therefore if that be the case the enforcement of the section will be quite impracticable.

Another objection is that the added costs to the people of this Commonwealth of disposing of their criminals would be simply enormous. Where our courts now sit a day to dispose of criminals, they would be obliged to sit weeks and months.

Another objection is that there is not any necessity for this section whatever; there is no demand for it; there is no use of it; there is no sense in it; because the complaint never has been in this Commonwealth that criminals have been punished too much, but on the contrary the very prevalent and common complaint is that they have been punished too little, and we have heard over and over again that through the delays and technicalities of the law criminals go unwhipped of justice. And here we propose to open wide a door through which all the rest of the criminals that do get punished now will be able to escape.

I, for one, am against it. I am quite willing to go for the amendment of the gentleman from Lycoming, (Mr. Armstrong,) because that seems to me to have reason in it; it is practically the law now, because we have writs of error in capital cases; but if it be so extended that a writ of error may be taken and a bill of exceptions sealed, in every criminal case, then the costs of litigation will be increased ten-fold; then the judicial force of the supreme bench must be quadrupled to do the business; and inasmuch as nobody except the gentleman from Montgomery, (Mr. Hunsicker,) who may have been pinched in some case in which he was defending a scalawag, is asking for this pro-

vision, I for one see my way clear to vote against it.

Mr. SHARPE. I move further to amend by striking out the words "as well as the Commonwealth," after the word "accused." I can see no propriety in giving the Commonwealth a writ of error because when a man has once been acquitted the Bill of Rights says he shall not be tried again.

The PRESIDENT *pro tem*. It is moved to amend the amendment by striking out the words "as well as the Commonwealth."

Mr. ROSS. I am in favor of the amendment which has just been proposed by the gentleman from Franklin, (Mr. Sharpe,) and I am earnestly opposed to the amendment to this section which has been offered by the chairman of the Judiciary Committee, (Mr. Armstrong,) and I am equally earnestly in favor of the section as reported from the committee of the whole.

We are told that there are three great inalienable rights: The right of personal liberty, of private property and of personal security. Around the right of private property are thrown all the guards, all the protections, that the ingenuity of man can conceive; and when a wrong is inflicted upon personal property the owner is enabled to go step by step to the court of last resort to ascertain whether that alleged wrong is a wrong or whether it is not. But when his right of personal liberty is invaded, when his right of freedom of action, when his right of personal security is invaded by an indictment, then, Mr. President, the law says to him: "You can only inquire as to that within one court, before one jury and before one judge."

Now, sir, I say that it is unjust, that it is wrong, that it is contrary to every principle of equity; that when but \$5 34 are involved in a case, the suitor may go from the court of common pleas to the Supreme Court of the State, but that when his liberty, perhaps for years, is affected by an indictment, trial and conviction, he has not the right to inquire whether the judge has erred in a ruling which he may have made upon the trial of that case. I say that this section, which simply gives to the defendant, in a criminal indictment, the right to investigate the rulings of the court, does no more than simple equity and simple justice.

Mr. President, it has just been said by the gentleman from Luzerne, and it is the

only argument I heard him make use of, that it will involve the Supreme Court of this State in endless labor to determine and to investigate the cases coming up from the criminal courts. What if it does? It is the business of the Supreme Court of this State to hear and determine the cases that come before it, whether they come from the civil or criminal side of the court room, and I am astonished that a gentleman of the intelligence of my friend from Luzerne should have had no stronger reason to urge against the propriety of this section than that it would impose upon the Supreme Court of this State additional labor in the performance of its duty.

One more remark and I have done. We have had a lengthy and an extended discussion in this body on the subject of the law of libel. We have had the press throughout the State calling upon us to amend the law of libel, in order to give them more freedom of criticism. I was opposed to any change in our Constitution in that respect, but I do believe and I do think that a newspaper editor or any other defendant who is arraigned upon an indictment for libel should have a right in a higher court to try the rulings of the judge who hears and determines the case in that prosecution, and should have the right to have them investigated by the Supreme Court of the State, for the very good reason that libels frequently are the subjects of a great deal of excitement and are the result of a great deal of local feeling—and courts *may* be affected by feelings of that character, and the rulings of courts *may* be affected by local feeling, and it is but fair that in that case there should be opportunity given to investigate the decision of the court below.

I do hope, Mr. President, that this section will be adopted, letter for letter and word for word, as it stands in the report of the committee.

Mr. ARMSTRONG. Mr. President: I think there is no greater illustration than this of the propriety and value of that parliamentary rule which subjects articles to first, second and third readings. This is not the first time in the history of this Convention that we have been moved from our propriety and persuaded to accept arguments of gentlemen who earnestly avowed and eloquently advocated certain false doctrines and principles of business or of jurisprudence, which we have been compelled to recon-

sider and repeal. It would be very unwise in the Convention not to learn something from such experience. The pending measure strikes me as a most extraordinary proposition, looking at the criminal law in its actual and practical administration. A marked distinction characterizes the administration of criminal law as distinguished from civil. The reasons ought to be paramount and conclusive which would move as to encumber the courts by a novel experiment, and to a degree which would so embarrass the administration of the law as practically to be a denial of justice in both civil and criminal cases. There is not, I believe, in the whole United States any Constitution which extends the right of criminal appeal as broadly as is proposed in this section. The administration of the law in civil and criminal cases is by no means similar.

In the first place it is to be noted that the defendant always stands before the court under the presumption of innocence. The jury are judges both of the law and fact, and when a man charged with crime is acquitted he cannot be retried, although the acquitted may have defied the instructions of the court. Examine the question in the light of experience and see if there is any necessity for such a sweeping and onerous and most oppressive burden to be laid alike upon courts of original jurisdiction and upon the Supreme Court. When has any man in this Commonwealth been unjustly condemned? In the experience of the hundred lawyers in this Convention can they point to a single instance—one single instance, and I emphasize it—in which an innocent man has been unjustly condemned? I have been concerned somewhat in the administration of criminal law, and I have not only watched its administration, but have been a part of it in my profession and position as a lawyer, and I cannot recall an instance in which an innocent man has been convicted. I have occasionally known cases where, had I been upon the jury, I would have given greater weight to doubts, and I have been concerned for defendants where I have sometimes thought they ought not to have been convicted, and where I have had reasonable doubt in my own mind as to their guilt; but I observed on reflecting upon it that that was always in cases in which I happened to be for the defendants. [Laughter.] But taking a broad view of our actual circumstances, and

looking at the administration of criminal jurisprudence in the State, where is the man who has been unjustly convicted? The courts constantly instruct the jury that if they have a reasonable doubt of the guilt of the prisoner it is their duty to acquit; and in a case where the doubts were strong the court would grant a new trial in case of a conviction. The truth is that we are in danger of throwing such protection over the guilty that we greatly endanger the safety of the innocent. We have gone too far in this direction.

I am entirely willing and would approve of a provision as just and proper which would provide that when a man is tried for his life, there shall be a review of his case, and the writ a *supersedeas* because the judgment executed would be beyond all recall; but to burden the courts with the necessity of taking down offers of evidence and objections to the rulings of the court, as in civil cases, in the trial of every little petit larceny, is to encumber the business of the courts without any sufficient reason. There is no justification for it. It seems to me we are in danger of going too far. If we adopt the amendment which I have had the honor to suggest, it will make the writ a constitutional right, to which I have no objection; it is the law of the State already by act of Assembly; but I would be willing to make it a constitutional right and thereby place it beyond legislative repeal, but I am not willing to extend it to every little petty crime where a Constitution may be had. Such defendants stand in no danger and therefore need no defence in that respect. There is no danger of the people of this Commonwealth endangering the liberty and personal security and personal rights of individuals. We, the people, have these things in our own keeping, and whenever dangers arise to a degree that may threaten the liberties of the people, they will be instantly corrected. But in the absence of any experience which points to the necessity of such a constitutional provision, I hope this Convention will not be guilty of such an innovation upon the established judicial experience of the country and the established practice in all Constitutional Conventions, as to place in this Constitution a provision which has never yet demonstrated itself to be a necessity.

I will say one word further as to the amendment proposed by the gentleman from Franklin (Mr. Sharpe.) It may be that that amendment is correct, because

in all ordinary criminal cases the Commonwealth has no occasion for the right of review, but there are cases in the quarter sessions which come within the definition of criminal law, in which the Commonwealth ought to have the right, as in many quarter sessions cases involving a trespass or nuisance. In cases of that kind the Commonwealth ought always to have the right as she has now at common law. I see no necessity for so providing in the Constitution, but it can do no harm. I hope the gentleman will so modify his amendment as to save the rights of the Commonwealth in cases of that kind. As applied to ordinary criminal cases, his amendment is eminently appropriate.

Mr. SHARPE. At common law the Commonwealth would have the right in such cases as the gentleman from Lycoming proposes to apply it to.

Mr. KAINÉ. The amendment of the gentleman from Franklin is not in order. It is not an amendment to the amendment. It will come in appropriately as a separate amendment hereafter, but it is no amendment to the amendment of the gentleman from Lycoming, the chairman of the committee. I suggest to him that he had better withdraw it for the present.

Mr. SHARPE. I will withdraw it for the present and renew it hereafter.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Lycoming (Mr. Armstrong.)

Mr. CORSON. Mr. President: I give my support to section ten without any of the amendments. Whilst I do not agree with my colleague in characterizing the amendment of the distinguished chairman of the committee as a covert attack to destroy the section, I know that this reform meets with strenuous opposition. I know that it is hard to convince the senior lawyers in Pennsylvania of the importance of such a section as this; but they will all agree with me that there is no certain rule of interpretation of criminal law throughout the State of Pennsylvania; for whilst the late distinguished judge in our district held that election officers were bound to receive the votes of deserters who were disfranchised by the law of Pennsylvania, Judge Butler, of Chester county, and Judge Brewster, of the city of Philadelphia, held the very opposite view. They discharged the election officers without trial, whilst our judge, if he had had the power, would have sent them to jail without trial. I repeat that

he charged the grand jury distinctly and directly that every election officer who refused to receive those votes was guilty of a crime under the law—whilst Judge Brewster, of the city of Philadelphia, discharged the election officers upon *habeas corpus* and refused to send them to trial. Now, all that we ask by this section is that we shall have the right to take such questions to the Supreme Court, and that they shall be determined there.

I will tell the gentleman from Lycoming, in answer to his question, that in my view, and I think in his view, at least in the view of Judge Ludlow of the city of Philadelphia, Marcer and Yerkes were unlawfully convicted in this city; and I hear the lawyers around me say "that is true."

Mr. BIDDLE. Two judges said so.

Mr. CORSON. Two judges of the city of Philadelphia said they were unlawfully convicted, and yet they were sent to the penitentiary, and might have remained there for years had it not been for the exercise of Executive clemency. Therefore I am in favor of this section as reported from the committee of the whole.

Mr. MANN. Mr. President: I cannot understand the opposition to this section. I listened very attentively when it was discussed before, and I have listened very attentively to the discussion to-day, and I confess my utter inability to comprehend the objections made to it or to understand why a single man in Pennsylvania should object to having men convicted according to law, not according to the decision of a single judge.

The gentleman from Luzerne says that it is a very serious thing to interfere with the conviction of criminals in this Commonwealth, as will be the case if this section is adopted. I take it, it is time to interfere with the conviction, if they are not convicted according to law of the Commonwealth; and how do we know that they are convicted according to law if there has been no supervision and no criticism upon the courts below by the court of last resort? I cannot understand why if a man is sued for the value of five dollars and thirty-four cents, it is important that he should have the right of taking his case up to the Supreme Court, and yet if he is indicted for a crime that will send him to the penitentiary, he is not to have any such right. I do not comprehend any such reasoning as that.

Why, sir, it seems to me that the best business the Supreme Court of the State

could be employed in would be in protecting the liberties of the citizens of the State against improper convictions. It is far better, a thousand times better, that some guilty men should go unconvicted than that an innocent man should be convicted improperly by a single district judge.

It is no answer to say that the jury are the judges of the law and the fact. There is no lawyer in this Convention who does not know that in point of fact the law as laid down by the judge rules the case. Take as an illustration a case of aggravated assault and battery. It depends entirely upon the decision of the judge in every such case whether the defendant goes to the penitentiary or is merely fined for having committed an assault and battery. The law, as the judge lays it down to the jury in that case, will send the man to the penitentiary or will convict him of mere assault and battery. I have known several cases tried under that act of Assembly, and I know where a jury took a statement of what constituted an aggravated assault and battery entirely from the mouth of the court, and I believe that in that case which I heard tried the men were sent to the penitentiary improperly.

When the gentleman from Lycoming asks are any men convicted in Pennsylvania improperly, I reply to him that the pardons of the Governor are generally asked for on the ground that there was an improper conviction. In nine cases out of ten the application for pardon is pressed upon the Governor because there was an improper conviction—not that guilty men properly convicted shall be pardoned, but that men improperly convicted shall be pardoned. That is the ground of the application filed in the office of the Governor of the Commonwealth in nine cases out of ten, or I am not correctly informed as to applications for pardons in Pennsylvania. I know, so far as they have gone from our district, that is the ground upon which they have been placed, and I know that the judge of that district has himself signed applications to the Governor for pardons on the ground that men were improperly convicted and improperly sent to the penitentiary.

What harm can this section do? It is said it will increase the expenses of the judiciary. If that is a reason, then decrease all trials. If there is any trial necessary, it is where a man is tried for his life or his liberty, which is equal to the former and more important in some cases.

As was well said by the gentleman in front of me, one of the great inalienable rights of the American citizen is the right of liberty, and if he cannot defend his right to liberty according to law it is valueless, for it can be taken from him upon the mere whim of a judge who has received some prejudice against him. Uniformity in the law is important, and I appeal to delegates how is that question to be settled properly in Pennsylvania without some such section as this? How is it possible to prevent confusion in the practice of criminal law in Pennsylvania without adopting the principle embodied in this section.

The *PRESIDENT pro tem.* The gentleman's time has expired.

Mr. LEAR. I do not propose to repeat the arguments that have been so well presented in favor of this section; but there is another view of it which has not been stated that I desire to present to delegates for their consideration. The difficulty is not always that the judge who tries a case does not know how to rule the law, but it is a very wholesome thing in the administration of the law, whether civil or criminal, that the judge trying the case knows that he has some earthly power to answer to as well as the power hereafter, and all judges have a wholesome reverence for the Supreme Court when the Supreme Court has power over them. I have seen cases tried and I have seen evidence ruled in and ruled out, in the very face of the law, in criminal cases by judges who either failed to give the matter due consideration or were anxious for a conviction, and who never would have so ruled if there had been any idea that they were to be reviewed in the Supreme Court of the State.

One of the things which the bar very much regret in this State is the uncertainty of the administration of the criminal law; that upon certain matters in this department of justice there are different rules of law in different parts of the State. On the very law of libel, which has been referred to, in the county of Allegheny and in the county of Philadelphia the law is ruled differently, according to the views of the respective judges. There are also different views of law on questions of the admission and rejection of evidence; and it is well known to the bar of Philadelphia, who have several judges of their criminal court, that the lawyers wait and watch, and try every expedient to get a particular class of cases

tried before a particular judge, because they know that he has certain views of the law upon that subject different from the other judges of the same court, and more favorable to their clients in particular cases.

Now I say we should have this thing stable, that there should be a stability about the administration of the criminal law as well as the civil law in Pennsylvania; but we never can have that stability until we have some final jurisdiction to determine it according to the rules of law and according to that which ought to be well understood by the legal profession of the State.

There has been some talk here to-day in the discussion of another section in this report that if you take certain judges in this city and put them to preside over the criminal courts, they will not understand how to administer the criminal law. There is no reason why every lawyer should not know how to administer the criminal law. If I had a boy as a student who could not read and understand the criminal law of Pennsylvania in three months, I would advise him to abandon the study of the profession as hopelessly stupid and unable to comprehend its mysteries. There is no difficulty about the criminal law. I have heard gentlemen of the profession represented as being great criminal lawyers. They may be adroit, they may be skillful in the management of a criminal case, they may be able men before a jury; but why there should be degrees in the profession upon the subject of the criminal law I never have been able to understand. We have in this State different rules for administering the criminal law before different courts. This section will establish one rule, make a uniform system in the State, and not encumber the judges of the Supreme Court to an undue degree, because the inferior courts will take care that their cases shall not so often need review as they do now.

Mr. TEMPLE. I rise for the purpose of making a motion to adjourn.

The PRESIDENT *pro tem*. It is moved that the Convention do now adjourn. ["No." "No."]

Mr. TEMPLE. My object in making the motion to adjourn is simply this—

SEVERAL DELEGATES. The motion is not debatable.

Mr. TEMPLE. I am not going to debate it; I am going to discuss this subject. ["Go on."] I submit that this is not a

matter that should be passed over lightly by this Convention. When it was before the committee of the whole it was taken up late in the afternoon and was not properly and freely discussed by the delegates. There were not as many gentlemen upon this floor on that occasion to endorse the action of the delegate from Montgomery who introduced the proposition, and I submit that—

Mr. CASSIDY. I rise to a point of order. First, it is not in order to disclose or say anything about what occurred in committee of the whole; and next, a motion to adjourn is not a subject of debate.

Mr. TEMPLE. I stand corrected. I have only followed in the wake of my friend from Philadelphia and others.

Mr. CASSIDY. I beg your pardon. I made no statement about the committee of the whole at any time.

The PRESIDENT *pro tem*. I believe the delegate from Philadelphia has spoken once on this question.

Mr. TEMPLE. I have not, sir. I beg your pardon. I submit, Mr. President, that I have the right to express my opinions on this subject.

The PRESIDENT *pro tem*. The gentleman will proceed. The motion to adjourn is withdrawn.

Mr. TEMPLE. Gentlemen can stand here by the hour and discuss subjects to be placed in our Constitution in regard to the rights of property. We were entertained here for hours and hours by one delegate on this floor upon the question of libel. And yet when we are here to discuss an article of this Constitution which refers to the interests of the people in their personal rights, gentlemen do not desire to hear it. I submit, Mr. President, that this is an important question, and it is no proper time at this late hour in the afternoon to take a vote upon it; but if it is to be voted upon at all, I desire to give my reasons for supporting it.

The PRESIDENT *pro tem*. The delegate will proceed.

Mr. TEMPLE. It has been stated, Mr. President, by the delegate from Montgomery (and I am very glad that this refreshing intercourse with this Convention has taken place) that he knew of a case in the State of Pennsylvania where a judge who was trying a cause extorted a confession from a witness in order to arrive at the result which suited that judge; and yet gentlemen upon this floor, when other subjects have been under consideration, would have you to believe that such

a judge in the State of Pennsylvania could not be found!

It has been referred to by the other delegate from Montgomery, as also by the chairman of the committee, that two gentlemen in the city of Philadelphia were convicted and sent to the penitentiary—

Mr. ARMSTRONG. I beg your pardon; I made no such reference.

Mr. TEMPLE. At any rate my friend (Mr. Biddle) says it is true that Judge Ludlow and Judge Finletter in this city decided that there had been no offence committed at all in the case alluded to; and yet there was a judge found in Pennsylvania who sentenced the defendant for what two judges of that court said was not an offence, to an imprisonment, I think, of five years in the penitentiary and \$300,000 fine. Still, we are told that cases of misdemeanor should not go to the Supreme Court, because it will load down the business of that court! Why, Mr. President, I take it that if a man is convicted for highway robbery, or convicted for murder in the second degree, an offence which subjects him to imprisonment of from five to twelve years, he has as much right to take his case to a tribunal which can pass upon it with impartiality and with that proper judgement that should characterize a court as I have to take my case to the Supreme Court where the amount involved is only \$4 25. I heard one of the judges of the Supreme Court say not long ago that a case involving but \$4 25 was tried twice in the court of common pleas in one of the counties of this State, and then occupied an entire session of the Supreme Court when they were sitting in the city and county of Philadelphia, involving no principle of law at all.

I submit that though this question is a new one, the principle is a proper one to be placed in the Constitution. I believe that the amendment of the delegate from Franklin (Mr. Sharpe) should be adopted, because I believe with him—

SEVERAL DELEGATES. That was withdrawn.

Mr. TEMPLE. Very well.

Mr. HAZZARD. I do not know that the Convention is very anxious to hear a speech upon this question; but I have a word or two to say. I do not like the section, and I will tell you the reason very briefly.

In the first place, the law as it is administered now in the criminal courts, it

seems to me, is only how best we can get rid of punishing criminals. Proceedings are commenced, often, before a magistrate and advantage is taken of any flaw in the commitment. I have known men to be discharged from our jail because the commitment was not just exactly right in every word. If a man is not discharged on that, the case goes before the grand jury, and if they by any possible chance find a true bill, the matter comes into court and then the lawyers pitch into the indictment and do all they can to quash the proceedings. If this fails and the matter comes to trial, if a man appears as a jurymen who has common sense, if he has ever read the newspapers, if he is fit for a juror at all, they challenge him off. If he has ever had sense enough to make up an opinion, away he goes. Then during the trial every exception possible is taken to the admission of testimony, and all such questions seem to be ruled almost uniformly in favor of the prisoner. If, after all this, a man is convicted, then a motion is made in arrest of judgment and for a new trial. Now you propose, after all this, after the court and the lawyers have tried in every possible way to get a man out of a scrape and not to punish him in a case where he ought to be hung—and they used to hang them in California a few years ago without much ceremony, and I do not know but that a little of that kind of law would be good occasionally [laughter]—now you propose to let him go to the Supreme Court. I say there are hindrances enough to the administration of justice in this country. Why look at the case of the fellow in New York who went from one court to another and then to Governor Dix, and the Governor said the man was convicted properly and there was no reason why he should be pardoned; and then he went to the court of last appeal, and now he has got a new trial, and before he comes to trial again half the witnesses will be dead and the rest will be spirited away, so that when he comes to have another trial he will not be punished at all.

I believe, if we adopt this section, we are just putting another additional obstruction in the way of the proper administration of justice and the enforcement of the law. It seems to me monstrous.

More than that, we have been told here by the lawyers all winter that the Supreme Court was overloaded and that we must devise ways and means to relieve it; and yet here is a proposition to send to

that court every little petty case of assault and battery because the judge in the court below did not charge right, perhaps, or let in some evidence that was not exactly according to the idea of the opposing attorney. All bastardy cases and all things of that kind are to go to the Supreme Court, and we propose to employ the time of our highest judges in reviewing matters of that kind because a lawyer who is defending a criminal knows every time that he is right and that every time the judge is wrong. [Laughter.]

Mr. ARMSTRONG. I desire to supplement my remarks by stating what I omitted before that this matter is entirely and completely within the power and province of the Legislature. They have the complete jurisdiction over the question, and it is safe to leave it there. I will not enter into an argument.

Mr. HUNSICKER. The Legislature have power to do everything that they are not prohibited from doing; and therefore we had better pass no Constitution at all on that argument.

Mr. KAINE. Mr. President. This is a very important question, and as there is evidently not a quorum of members present now, I move an adjournment. ["No! No!"] Then I demand a call of the House. In my opinion there are not fifty members here.

The PRESIDENT *pro tem*. The roll will be called if the member requires.

Mr. KAINE. I withdraw the call at the request of gentlemen around me, and move that the Convention adjourn.

The motion was agreed to, and (at six o'clock and forty-two minutes P. M.) the Convention adjourned.

ONE HUNDRED AND THIRTY-SECOND DAY.

TUESDAY, July 1, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday was read and approved.

LEAVES OF ABSENCE.

Mr. EDWARDS asked and obtained leave of absence for Mr. Andrews for a few days from to-day, on account of sickness in his family.

Mr. FULTON asked and obtained leave of absence for Mr. Hall for a few days from to-day.

HOURS OF DAILY SESSION.

Mr. KAINE. I offer the following resolution:

Resolved, That hereafter the Convention will meet at nine and one-half A. M. and adjourn at one o'clock P. M., meet at three o'clock and adjourn at six o'clock P. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted ayes thirty-four, noes twenty-three.

The resolution was read a second time.

Mr. KAINE. Mr. President: It is evident that in the evening after six o'clock the Convention is entirely worn out, and I think for all purposes we had better adjourn at six. As to meeting at nine or half-past nine I care nothing about that. We should save half an hour by meeting at three in place of half-past three, so that there would be only a difference of half an hour between this and the rule we have adopted.

Mr. LILLY. I move to strike out half-past nine and make it nine, and strike out six and make it half-past six. We may meet at nine in the morning as well as not.

Mr. KAINE. I will meet that half way. I will modify the resolution to make it nine o'clock.

Mr. LILLY. Very well.

Mr. NILES. Very many of the delegates go out in the country and they have to leave here at six o'clock, in order to

reach their homes. They did so last evening; and when we stay here until seven o'clock we are without a quorum.

Mr. LAWRENCE. That is not our fault.

Mr. T. H. B. PATTERSON. I move to amend, by making the hour of adjournment half-past six.

Mr. KAINE. That is the very thing we do not want.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was rejected.

Mr. MACCONNELL. Let the resolution be read as it now stands, so that we may know exactly what it is.

The CLERK read as follows:

Resolved, That hereafter the Convention will meet at nine o'clock A. M., adjourn at one o'clock P. M., meet at three o'clock and adjourn at six o'clock P. M.

The resolution was adopted.

Mr. LILLY. May I inquire of the Chair whether that takes effect to-day or not?

Mr. KAINE. No, sir; it will not. It is from and after to-day.

Mr. LILLY. I ask for a decision of the Chair on that point.

The PRESIDENT *pro tem.* The Chair decides that the resolution does not go into effect until to-morrow.

ACCOUNTS AND EXPENDITURES.

Mr. HAY submitted the following report, which was read:

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

That it has carefully examined an account of William W. Harding, dated June twenty-fifth, 1873, for three hundred reams of paper furnished to the printer under his contract with the Convention, amounting to two thousand two hundred and fifty dollars; that said account is certified by the Committee on Printing and Binding, and that the printer acknowledges the receipt of the paper therein mentioned, and that it is in accordance with the quality required by contract.

Also, the account of the Philadelphia gas works for gas supplied from May

twenty-second to June twenty-fourth, amounting to thirty dollars and fifty-nine cents.

These accounts are reported to be correct and proper to be paid.

The committee further reports that on the sixteenth day of December, 1872, a warrant was drawn in favor of Edward C. Knight, a member of this Convention, for seventy-one dollars and forty cents, for his allowance for postage, stationery and contingencies and mileage to and from the session of the Convention at Harrisburg, which warrant Mr. Knight states that he has not received. The warrants of the Convention are payable only to the person in whose favor they are drawn, and not to bearer, so that no loss can occur to the State from this fact; and for the payment to Mr. Knight of the amount due him as above mentioned, it is necessary that a duplicate warrant therefor should be drawn by order of the Convention.

The following resolutions are accordingly submitted:

Resolved, That the accounts mentioned in the foregoing report are hereby approved; that a warrant be drawn in favor of William W. Harding for the sum of \$2,250, in payment of his said account, and that the account of the Philadelphia gas works be paid by the Chief Clerk.

Resolved, That in lieu of warrant No. 65, dated December 16, 1872, for the sum of \$71 40, issued to Edward C. Knight for his allowance for postage, stationery and contingencies and mileage, which has not been received by him, a warrant be drawn in his favor for the same sum and marked "duplicate;" and that a copy of this resolution be furnished to the State Treasurer, by the Chief Clerk, with notice not to pay the original warrant, No. 65.

The resolutions were severally ordered to a second reading, read the second time, and adopted.

THE JUDICIAL SYSTEM.

The *PRESIDENT pro tem.* The business regularly in order is the consideration of the article on the judiciary. When the House adjourned yesterday it had under consideration the tenth section. That section will be read.

The *CLERK* read as follows:

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 proper for review.

The *PRESIDENT pro tem.* The question is on the amendment offered by the delegate from Lycoming, (Mr. Armstrong,) to strike out the word "criminal" and insert the word "capital," and by inserting after the word "case" the words "and in such other criminal cases as may be authorized by law."

Mr. PURMAN. Mr. President: Our criminal law and procedure is the outgrowth of morality and civilization. Its present degree of perfection and wisdom is the result of experience and the fruit of a severe conflict between the sovereign or the State on the one side and the people on the other. The State retains the right to dispense justice between the people and its sovereign authority and therefore should allow the accused the benefit of the labors and services of its first law officers. The civilization, and the high appreciation of liberty by the people of Pennsylvania, require that we shall perfect the criminal procedure of the State. On principle, no one would pretend that a party accused of murder, perjury, forgery, rape, robbery, arson, or even an aggravated assault and battery which might carry his person into the penitentiary, should not have the right to be tried by the law of the land and that that law should not be pronounced by the highest judicial tribunal. I say on principle no one pretends to deny to the accused the right to be heard on an appeal on writ of error to the Supreme Court. In all civilized countries where a judicial trial in a high criminal case has been anything above a farce or a mob, the liberty and the life of the citizen have always been regarded with greater favor than the right of property. The argument that the jury are judges of the law and the facts, and therefore there is no occasion for allowing writs of error in criminal cases, is not well founded, because practically the jury always takes the law as laid by the court. The argument that the judges of the Supreme Court are not acquainted with the criminal law of the land, and therefore to allow writs of error in criminal cases would bring the law into conflict, is not founded in faith, and calculated to mislead the Convention. It is said that so great is the sympathy of the people and of juries and of judicial tri-

bunals in favor of life and of liberty that all the errors are committed in favor of the accused and none against the State, and therefore there is no occasion for a writ of error in criminal cases. That argument seems to me not well founded. The liability of the judge to error in criminal cases and in civil cases are the same. The same imperfections, the same passions, and the same prejudices inhere in a judge when he comes to try a criminal cause that would inhere in him when he comes to try a civil cause, and hence the accused ought have the right to a writ of error in the one as well as the other. Not only so, Mr. President, but if the argument of some of the gentlemen on this floor is correct, that no irrelevant evidence is ever received or incompetent witness permitted to testify, nor nobody erroneously convicted, the allowance of a writ of error in such cases would not increase the business of the Supreme Court because, according to the argument, no writs of error would ever find their way into the Supreme Court. But that is not true, and the argument is begging the question.

Then it is argued further that there are so many trifling criminal causes that there ought not to be a writ of error because it would overburden and overwork the Supreme Court. I have no way of weighing or measuring that kind of an argument. Talk about the triflingness of a cause when the effect of a conviction is to consign a man to the penitentiary and render him infamous for life! I cannot understand how any one can speak of such a cause being trifling, or urge, as an argument against the right of appeal, that it will overwork the Supreme Court.

This is not the first time that the friends of reform and improvement have been resisted by great names and cultivated minds. When trial by jury and by witnesses began to be used, the enemies of the reform opposed them, saying it would delay justice and tend to the acquittal of the guilty, but the friends of the reform persisted in their efforts, and we have as the result our present system of trial by jury and by witnesses.

It seems to me that the experience of many of the gentlemen who complain of the character of the causes proposed to be reviewed in the Supreme Court ought to have taught them that questions of life, liberty and the enjoyment of property cannot in any proper sense be called small or trifling.

Sir, some of the most important principles in the law have been pronounced by the highest courts in cases in which the sum in controversy was of an insignificant character. Take the case of *Cutter vs. Powell*, one of the leading cases in England and in America, and the sum in controversy there did not exceed \$60. Take the case of *Higham vs. Ridgway*, another leading case, and the sum in controversy was a very small sum, about £5. Take the case of *Price vs. the Earl of Tarington*, and the same is true. Take the case of *Bent vs. Baker*, another celebrated case, one of the most celebrated cases on the admission or rejection of evidence, and the sum in controversy was trifling. When we come to look at the question in its true light, no argument can be made against the proposition because of the sum in controversy or the triflingness of the cause.

I am in favor, therefore, of retaining in the Constitution the right of a writ of error in capital or homicide cases, and I am in favor of a declaration in the Constitution that a writ of error shall be secured to a party in such other criminal causes as may be authorized by law and in such manner as shall be regulated by law. I am not in favor of every trifling assault and battery finding its way into the Supreme Court, for I do not suppose the profession would carry it there. To talk about the profession carrying every trifling matter to the Supreme Court is to belittle the members of the bar.

I am in favor of the amendment of the chairman of the committee that in all other cases except homicide cases the right shall be regulated by law; that is, the Legislature shall throw about it such wholesome restraints as will prevent its exercise in idle and frivolous cases. In cases of perjury, forgery, arson, rape, robbery, and such like, I would throw such regulations around the exercise of the writ as to bills of exceptions and mode of procedure as would prevent the right from being abused. If the writ is to be allowed in any case, I suppose it ought to be allowed in every case where, upon conviction, the punishment would be confinement in the penitentiary, because it makes very little difference to the accused whether he is sent to the penitentiary for five years on a charge of robbery, or on a charge of manslaughter, or on a charge of aggravated assault and battery. He is as infamous if he be sent to the penitentiary on the charge of aggravated assault

and battery as if he went there on a charge of manslaughter, so far as the punishment is concerned.

But while I favor the *right* to have a writ of error I am in favor of such wholesome restraints being thrown around the exercise of the right as will prevent it from being mischievous and being used in idle and frivolous causes. Therefore I shall vote for the amendment of the chairman of the committee, to give the writ of error in all capital cases where it is asked. I am heartily in sympathy with the gentleman from Montgomery, (Mr. Hunsicker,) that the right to a writ of error ought to be secured in criminal cases; but I do not desire to see it exercised in all trifling cases, such as breaches of the peace, complaints of a wife against her husband for maintenance, little trifling assaults and batteries, and even in the ordinary common cases of fornication and bastardy. It is true there are some of the cases of fornication and bastardy which perhaps ought to be reviewed in the Supreme Court, or the right to have the rulings of the court below in admitting or rejecting evidence upon the trial as well as the charge of the court reviewed, would be very proper. It is as hard for a man to pay five hundred dollars in obedience to a sentence in a case of fornication and bastardy as it would be for him to pay a judgment of five hundred dollars obtained on a promissory note that he had never executed, but where he was mulcted by the erroneous ruling of the court below. In both cases it is a question whether he shall pay five hundred dollars; but in a case of fornication and bastardy it is not only a question of the payment of five hundred dollars, but it is a question of character. Here is a married man accused of fornication and bastardy; his reputation and that of his family, which is dearer to him than all he has, is at stake. Shall that man undergo a sentence secured against him without having a fair trial, a full trial, and a judgment pronounced against him according to law? It seems to me it ought not to be so. It seems to me when this Convention undertakes to put down the right of the writ of error in criminal cases on the ground that there are many small criminal cases, they are treating the liberties of the people and the rights of the citizen with less than their full measure of respect.

I stand by this amendment of the gentleman from Lycoming (Mr. Armstrong.) I am in favor of this writ of error, because

it is in favor of life, in favor of liberty, and the enjoyment of all that is worth having in this country or any other.

It is not so easy always to get these cases regulated in the Legislature as may be at first supposed. I remember the Schoeppe case well, and it caused a fierce conflict in the Legislature before the bill was passed authorizing a writ of error. I was not in favor of it for that particular case, but I was in favor of it as matter of principle. I did not favor it as applied to that one case, but the principle involved in the legislative action was correct, and it seems to me that those who agree with that principle, who properly respect the rights of the people and the liberties of the people, must vote in favor of this amendment and for the section as amended.

Mr. BOYD. I trust the gentleman from Franklin will withdraw his amendment to the amendment.

Mr. SHARPE. It is withdrawn for the present.

Mr. BOYD. Then for the future I trust it will not be renewed, because wherever one party is given the right of appeal, surely the other party ought to have the same right.

Mr. SHARPE. What would be the use of a writ of error on the part of the Commonwealth in a homicide case where the defendant was acquitted? He could not of course be tried again.

Mr. BOYD. None at all. I do not consider that the Commonwealth would ever take a writ of error in a homicide case or in any case of felony where there has been an acquittal. But it would be valuable to the Commonwealth in cases of nuisance, forcible entry and detainer, and the like, because while these cases are always Commonwealth cases we all know that there is generally a private prosecutor interested in them, and if the court should rule the law against him so as to deprive him of the possession of the property or should rule, as a question of law, that it is no nuisance the prosecutor, the party immediately affected, although the suit be in the name of the Commonwealth, would have no redress whatever by an appeal to the Supreme Court on a writ of error, and therefore I would give the right of appeal to the Supreme Court to the Commonwealth as well as to the defendant.

Now, I appeal to the chairman of the Judiciary Committee to withdraw his amendment, because as it stands it is of

no value whatever, for the reason that in homicide cases there already exists the right to a writ of error. I am unable to conceive how a writ of error in criminal cases can work an injury apart from the abstract right of the party to a writ of error in a criminal case as well as any other.

It has been said that the Supreme Court would be loaded with these small criminal cases. We all know that in assault and battery cases, and in the minor misdemeanors, where a conviction takes place, the sentence does not range in such cases more than from thirty days to two months or three months, and in extreme cases even, it is only six months or nine months. A writ of error therefore in cases of that description would be of no advantage because a party convicted could not have his case reviewed in the Supreme Court under a year; and therefore a defendant suing out a writ of error in a case of that kind, after his term as a criminal had expired, would not be benefited in any respect. This class of cases which it has been supposed would take advantage of this writ of error would seldom if ever go into the Supreme Court for the reason I have stated. Where a man is convicted of a higher grade of felony, however, and he is sentenced for a long term of years, and goes to the penitentiary and sues out his writ of error, he will have to lie there one year before his writ is heard and decided, and surely if an error has been committed on his trial which has so consigned him to the penitentiary, and the Supreme Court decides that there is error in the record, he has suffered imprisonment for a term of one year anyhow, and he should be relieved. Even in such cases where he is sent back for another trial the man would only be released from the penitentiary to be removed to the county from which he came and placed in confinement in the jail there until he has his new trial, so that it would be impossible for him to escape without a second trial. Still this privilege would be invaluable to him, and no abuse can result in such cases as far as I am aware to the Commonwealth.

I am aware that it has been argued here with great force that the Supreme Court would be overburdened with this class of cases. We have had it stated on this floor by high authority that the Supreme Court are not overworked, that it has an abundance of time to perform all official duties, and indeed some go so far as to say that they can do a great deal more

than they do; and by a very decided vote this Convention has said that no additional aid or assistance is necessary for the Supreme Court. But if it should be found necessary to augment that court to enable them to discharge these extra duties which this section will impose the Legislature, under the report of the Committee on the Judiciary, can provide for this increase of their force, or the Legislature can create such other court or such other additional judges as may be necessary to meet the demand in such cases as these.

The cases that would go to the Supreme Court on a writ of error in the ordinary run of criminal cases must be, as everybody familiar with the criminal courts knows, very limited. But there are cases in which they ought to be reviewed in this court. I shall, therefore, vote against any amendment to this section, but shall vote for its adoption as it came from the committee of the whole for the reasons I have stated.

Mr. J. S. BLACK. I am supposed to know something about the administration of criminal justice, because I was once prosecuting attorney of Somerset county. I endeavored to discharge the duties of a public accuser with fidelity. I felt no inclination in the world ever to allow any rascal to escape, and I certainly never tried to convict an innocent man. I am willing to bear my testimony to the truth on this subject. I believe the condition of our criminal law in this respect has been better than it is likely to be made by any alteration in it. There is no necessity for the purposes of justice that an appeal or writ of error shall be taken from the court of original jurisdiction; at least we do not need that to a greater extent than it is allowed now.

Every error of mere law that can be committed is liable to revision in the Supreme Court as the law now stands. Where the indictment does not change any offence, where the verdict is not in accordance with the indictment, or where the sentence is not in accordance with the verdict, or where the trial is in any respect a violation of law, the error can be made to appear on the record and the judgment may be reversed.

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

Mr. J. S. BLACK. Certainly.

Mr. HUNSICKER. I want to know if an offer of testimony is made, and the judge

excludes it, whether that can be reviewed?

Mr. J. S. BLACK. No; it cannot be now reviewed.

Mr. HUNSICKER. Nor if rejected, either?

Mr. J. S. BLACK. No; and it ought not to be. I was going to add that a perfectly legal trial can be had as the law now stands, and for any violation of the law which appears upon the record you can have the judgment reversed. But those questions which relate to the merits of the case, such as the legal sufficiency of the proof, that is left to the court of original jurisdiction and to the jury. Such a question is safe there, safer than it would be if taken up and heard over again in the Supreme Court.

What does a judge of the Supreme Court know about the criminal law of this country that is not known to the courts of common pleas and the juries? It is too simple for anybody to make a mistake about if he will but try to understand it. You have a question whether a man is guilty or not guilty of a particular offence, whether the proof comes up to the allegation in the indictment, and who is there that does not comprehend that in an ordinary criminal case? You forget the interest of the public in the punishment of crime. We must punish rascals speedily. We cannot afford to postpone justice while they are playing with us in the Supreme Court. When a criminal case goes there, no matter how it may be determined, the probabilities are that the accused party goes unwhipped. The manner in which this privilege has been used and abused in the State of New York is a sin, and a shame, and a scandal. It has been carried out in such a manner as to make the law an encouragement and not a terror to evil-doers.

This a fruitful subject, upon which much might be said, but I content with very little. My sentiments as a lawyer are already spoken by the gentleman from Lycoming, (Mr. Armstrong,) and what I think is the sterling good sense of the matter has been expressed by my friend from Washington, (Mr. Hazzard,) and therefore I do not mean to say more. To repeat what they have said would be a loss of your valuable time.

Mr. CUTLER. Mr. President: I am in favor of the amendment of the gentleman from Lycoming just as it is written. I do not know who is responsible for the

statement repeated by the gentleman from Montgomery, (Mr. Boyd,) this morning, that the Supreme Court is not overburdened. That gentleman's experience must have been very different from mine. If he has any knowledge of this district or any knowledge of the western district, for which the court sits at Pittsburgh, and has come to such a conclusion as was embodied in that remark, I am very much astonished.

Now, this Convention has set its face as a flint against any relief to the Supreme Court. The addition of two judges to that bench amounts to nothing in the way of increased discharge of business. Yet we are proposing, by giving the right to a writ of error in all criminal cases, to add to the burdens of that court what I presume would amount to more than twice the quantity of business now pressed upon them. It will be simply impossible for the Supreme Court to discharge any such duty; it will be simply impossible for any court of final resort to discharge any such duty. Unless we have two or more Supreme Courts, or unless we have an intermediate court at which these cases shall finally be stopped, the court will be overwhelmed by business and it will be impossible for it to discharge itself.

But that is a small consideration. It is argued here that the right to writ of error should exist in all criminal cases. There are two sides to that question. The Commonwealth has her interests as well as the prisoner. It is the interest of the Commonwealth, it is the interest of the people of the Commonwealth, that the administration of criminal justice shall be speedy and efficient. To interpose between the prisoner and the final penalty for his offense a series of courts through which he may carry his cause by appeal, as he is accustomed to do in civil causes, would be practically to paralyze the administration of criminal justice. The impunity it would give to crime would amount to an evil so great as to become absolutely unbearable.

The distinguished gentleman from York, (Mr. J. S. Black), who has just spoken, has alluded to the condition of things in the State of New York. Even a worse condition of things would arise in our State if so broad and unlimited a right of appeal was given.

Moreover, there is far less danger that injustice will be done by juries in criminal causes than there is in civil causes. There are a few striking instances occur-

ring at long intervals of time where unjust convictions seem to have taken place, and they dwell in the minds of men, and they are cited and referred to as if they were illustrations of that which occurred frequently; whereas, in point of fact, so instinctive is the hesitation of juries to convict men of offenses, except the evidence be such that it is impossible to resist the conviction that results from it, that there are ten chances of the escape of a guilty man; nay, a hundred chances of the escape of a guilty man in a criminal cause to one instance of the conviction of an innocent man contrary to law, or contrary to the evidence in the case. I think, therefore, that so long as in capital cases (where if injustice has been done and the sentence has been executed it will be without remedy) the right of appeal is secure, and so long as an opportunity of appeal is given where injustice seems to have been done, where some *prima facie* case of injustice is exhibited to the mind of the court, so that a special allowance of a writ of error may be made, we have done all that is consistent either with the amount of business that must be transacted by our Supreme Court, or with the certainty and the speed with which criminal justice should be administered for the sake of the Commonwealth and her citizens.

For these reasons, I am in favor of the amendment of the gentleman from Lymcoming just as it is written.

MR. BUCKALEW. Mr. President: If this question were presented now for the first time as an original proposition in the Convention, I should refrain from making any remarks; but I am admonished by the fact that we have this proposition before us on second reading as adopted in committee of the whole, that debate is necessary. It would seem that the majority of the Convention are predisposed to adopt this very remarkable and in my judgment pernicious change in the criminal laws of the State.

At present a defendant in a criminal prosecution can have the record of his conviction in certain cases reviewed in the Supreme Court, as has been explained by the member from York.

A special allowance of a writ is provided for by statute upon a hearing by any one of the judges of the Supreme Court; and then, again, by recent regulation it is provided that in all cases of felonious homicide, whether murder or involuntary manslaughter, the whole case may

be taken to the Supreme Court for review, and that court is required to look through the evidence to ascertain whether it seems probable that any injustice has been done. These are the remedies, by way of appeal, which the law provides at present in criminal cases, and I think they are proper,

I did not rise to speak, however, as to that, but to the argument so strongly and impressively put by the gentleman from Montgomery (Mr. Hunsicker) on a former occasion, that there was now an invidious distinction in our law between civil and criminal cases; that whereas in a civil case upon a controversy of ten dollars a party could take his case to the Supreme Court, in a very grave criminal accusation against him he had not this right, or at least he had not this right to the same extent. That argument seems plausible and it captivated the mind of the member from Montgomery, doubtless, because it appealed to his keen sense of justice and equality of right under the law. But the argument is a fallacy for the reason that there is no strict analogy, no complete resemblance between the administration of civil and criminal justice in our inferior courts. In a civil case the judge who presides controls. The jury pass only upon such matters as the judge pleases, under the rules of law, to submit to them. If they give a verdict that is against his opinion, he grants a new trial. He has, so to speak, absolute power over the whole case, over the decision of the law and the decision of the facts. The jury is only an assistant to him to pass upon such matters of fact as he submits to them; he controls. Now, it is not to be tolerated by our people that a single man in civil cases shall decide once for all and finally upon the rights of the citizens. They would not be satisfied with that principle placed in the Constitution if any one should propose it. Therefore, in all cases from the judgment of this single man you permit an appeal to the Supreme Court of the State.

But in criminal cases how different it is! There by fundamental law the jury in any case are the judges of the law and the facts; and from their deliverance of the accused, there can be no appeal. The judge cannot control them. If they acquit a defendant, he cannot order a new trial. Consider also the particulars that enter into a criminal trial. Unlike the fact in a civil case, the defendant is presumed by law to be innocent. The whole

burden of proof is put upon one of the parties, to wit, the Commonwealth; and if there be a reasonable doubt, the defendant goes free. No such principle obtains in civil cases. And then, observe, a verdict in favor of one party, to wit, the defendant in a criminal case, is an end of the controversy. The Commonwealth cannot renew that dispute; the Commonwealth is concluded, whereas the defendant has various remedies afterwards: a motion in arrest of judgment, or for a new trial, or a reviewal of the record in the Supreme Court.

There is another and most important distinction between civil and criminal cases. If a defendant by any accident is unjustly convicted and the court will not redress the injury done him, (and the court has full power to do it by a new trial always,) or if by after-discovered testimony he is able to show that it is likely that he was innocent, what does your Constitution provide? A pardoning power, unlimited, to be exercised for any cause and at any time by the chief magistrate of the Commonwealth, the choice of all the people of the State.

Now, pass in review—I have not time to elaborate this because time will not permit—consider with what tenderness your Constitution and laws deal with an accused party. Commencing with a presumption of his innocence, they treat him kindly through all the stages of the investigation of his case in the criminal court and afterwards allow the Governor to interpose in his behalf on cause shown.

Is there then any close similarity between the administration of civil and criminal justice in this State, so that because you permit a party to take a civil action by writ of error to the Supreme Court, therefore you ought to allow a defendant to take a prosecution against him to the same court? I submit that the whole argument and all this impassioned appeal to us, based upon it, falls to the ground, and that it does not follow that you ought to extend this remedy to criminal cases.

Mr. BROOMALL addressed the Chair.

The PRESIDENT *pro tem.* Did the delegate speak on this point yesterday?

Mr. BROOMALL. I have not spoken upon this point at all, either on the present occasion or any former occasion. I yield, however, to the gentleman from Lycoming.

Mr. ARMSTRONG. I desire to make a merely verbal, modification of my

proposed amendment. Instead of saying “capital cases,” which is a word of somewhat indefinite signification, I prefer to take the words now used in the act of Assembly, namely, “in every indictment for murder or voluntary manslaughter, and in such other criminal cases as may be authorized by law.” It does not change the idea at all, but it is better phraseology.

The PRESIDENT *pro tem.* The amendment will be so modified.

Mr. ARMSTRONG. I will state, sir, that in offering this amendment it is for the purpose of perfecting the section under the possibility of its passage; but I see no necessity for the section at all, and I trust the whole thing will be voted down.

Mr. BROOMALL. Mr. President: If I could agree with the chairman of the Committee on the Judiciary that there is no necessity for the section, I should certainly not trouble the Convention with any remarks of mine. I have refrained from saying anything on this question hitherto, because I desired to make up my mind fully upon the necessity of what is undoubtedly a considerable change in the law. Having done so, I desire to say a few words in addition to what has been said. I shall not pretend to argue the question in favor of the abstract right of an individual to the highest criminal law as well as the highest civil law, pronounced on his case by the highest authority in the land, after the very able remarks of the gentleman from Greene (Mr. Purman) upon that question. If anybody could have had any doubt how he ought to vote upon the amendment, as well as upon the section, he ought to be satisfied by the argument of the gentleman from Greene. I was only surprised that the argument of that gentleman failed to satisfy himself. After giving us the strongest possible reason for voting against the amendment and for the section, he deliberately comes to the conclusion that he will vote just exactly the other way. He reminds me of what was said of a very prominent statesman, now deceased, that he was in the habit of talking the best and voting the worst of any man in the body of which he was a distinguished ornament. [Laughter.] There is no reason why a man should not have the highest law of the land when his life, his liberty and his reputation are at stake; there is no reason, I say, why he should not have the best law of the land, pronounced by the highest authority in the

land, in that case as well as where his money is involved. It is idle to talk about there being such a distinction between our rights under the civil law and our rights under the criminal law, by which the one would be distinguished from the other, much more that the latter shall be less regarded than the former. I will not insult this body by attempting to prove, because it is an axiom, that a man's liberty and his reputation are of more importance to him than his money, and that if there should be a distinction between them, liberty and reputation should be regarded and money interests should be left to take care of themselves. Hence, convinced, if I needed any conviction at all, by the arguments of the gentleman from Greene, I shall vote for the section and against the amendment.

But the gentleman from Columbia (Mr. Buckalew) says that there is a radical difference in administration of these two branches of the law by which one can be distinguished from the other. There is some truth in the assertion; but the inference he draws from it is not to my mind so clear. There is a difference. In criminal cases the jury are the judges of the law and the facts. In civil cases the jury are the judges of only the facts. What then? Are the jury so much better judges of the law than the judge who presides that we can afford to make them the tribunal of last resort? Are they so much better acquainted with the law that it is safe to trust our dearer interests to them, and yet not trust our interests less dear to the president judge? Why, sir, if that is the case, let us turn our courts of original jurisdiction just the other side up and put the jury in place of the judge and the judge in place of the jury, and we can do without the Supreme Court altogether. If we do not need an appeal from the jury in criminal cases, of course we do not need an appeal from the jury in civil cases which are of so much less importance, and by letting the jury be the judges of the law and of the fact in all cases we get rid of all this overburdening of the Supreme Court, because we get rid of the necessity for a Supreme Court altogether. I submit that the inference which the gentleman from Columbia draws from his facts is not warranted by the facts themselves. It is said that this will overburden the Supreme Court. Possibly so! But if the Supreme Court is overburdened, do not take from it that which is most important to the people, the care of the liberties and

the lives and the reputation of our citizens, and leave to it that which is of the least importance, the care of their money. Some little time ago I started the idea here that the Supreme Court might be relieved of a great deal of its labor by limiting the causes which go there in point of value, so that no cause which involved less than one hundred dollars should go up. And gentlemen raised their hands in holy horror at the idea of not allowing a man, in a case where five dollars and thirty-three cents of his dear money is at stake, the right of appeal to the highest tribunal in the land when he desired it! Is not the remedy for this overburdening of the Supreme Court the easiest possible? Let the cases which go there be cut off by a horizontal line, if you choose, civil and criminal, and let the cases which come below that line be decided finally in the court below. But if you must make a distinction, let those cases which are of the most importance go up to the Supreme Court, and those which are of the least, to wit, those which concern our money, be decided by the court below.

The gentleman from York (Mr. J. S. Black) says that there is now a review in all cases where a man may run the risk of being unlawfully convicted. That is true to some extent. The gentleman from York has, however, doubtless another reason against this innovation of the law, and that is that since the adoption of his oath, which is almost as long as the book of Deuteronomy, original sin and all its consequences have been absolutely done away with, and we shall need no criminal law and no Supreme Court, and the whole community will be free from vice from this day out to the end of the human race. But there is no remedy in a large class of cases for an illegal conviction. Suppose the court below is asked to decide the question of the age at which a female must refuse consent so that the defendant shall be guilty of rape, what is the earliest period at which her want of consent must be proved and what would the court say? Until recently it would have to guess the answer. Suppose it should decide that question wrongfully against the defendant, as in a case in which I unhappily missed acquitting a defendant, suppose an error made in a case of that sort, or in excluding or admitting testimony, where is the remedy? There is none. The gentleman says that everybody understands the criminal law. He cannot tell me whether the age of

consent in a female was ten or twelve years at common law, because up to the recent Pennsylvania enactment there was no Pennsylvania law on the subject. It was to the disgrace of our State that this feature of the criminal law had never been passed upon in Pennsylvania, and had been ruled differently in different places elsewhere, so as to leave the law unsettled, simply because cases of this kind could not go up to the Supreme Court.

The PRESIDENT *pro tem.* The gentleman's time has expired.

MR. HUNSICKER. Mr. President: I do not often trouble the Convention, and I promise not to trouble it again on this article after this section has been disposed of; but I simply wish now to be heard on this proposition, because I have given to it a great deal of thought. And let me premise my speech by saying to the gentleman from Lycoming, the chairman of the Committee on the Judiciary, that this morning he has displayed more frankness than characterized him last night. He now declares that his purpose and object is to defeat the section altogether. Last night we had the argument with us; and this morning the enemies of justice were compelled to bring upon the floor of this House the intellectual Goliath from York, who has made his speech upon this subject. And, as of old, when that warrior made his appearance he struck the hosts of Israel with terror. But armed and panoplied as we are for the right, we can slay him and all his adversaries with a simple shepherd's pouch. To undertake to tell us, to tell an intelligent Convention, as the gentleman from York (Mr. J. S. Black) has, and as the gentleman from Columbia (Mr. Buckalew) has, that to-day you have a right to a writ of error in a criminal case, is forever to declare their own ignorance. It is not a writ of right. You must go upon your knees before the judges of the Supreme Court, or one of them, and beg and specially implore them, or him, to grant you a special *allocatur*; and if they grant your request, they remove nothing but the indictment, the record and the sentence. Does the gentleman from York deny that? Does the gentleman from Columbia deny that?

When I put the question to the delegate from York, "can you take an exception to the rulings of the court in the admission of testimony," he was compelled to answer, "no, you cannot do that." Can

you take exceptions to the refusal of testimony? No, you cannot do that! The Commonwealth may put a man on the stand who may be incompetent to testify because he has been convicted of perjury, and that will not appear on the record, although because of that man's testimony an honest man's reputation may be forever destroyed. Yet these men who are standing here holding up their hands in holy horror at increasing the business of the Supreme Court, say in the next breath "leave this section applicable to cases of murder!" Where is the man who would not rather be hung for a crime than drag out a weary, miserable existence, dishonored himself and his family disgraced if he has been convicted improperly, either through the malice or stupidity of a judge? For my part, hold out no such boon as that! Prate not to me the great character of your rights under the present Constitution! Prate not of your constitutional provisions! They are glittering generalities. They disappear as mists before the morning sun when you come before a judge of the quarter sessions put in office under the system of an elective judiciary—a man who may know nothing about law, either civil or criminal. You can make him take down all the testimony, and you can review everything that he does in a case where there is at issue the paltry pittance of \$5 34; and that being so, what equity is there in a system according to which, if you are tried for arson, or for robbery, or for statutory burglary, or for the thousand offences existing at common law and by our penal code, you are bound absolutely hand and foot?

We beg no favors. All that we ask is to be tried according to law. Is not that reasonable? Is it not true that under the present system a man charged with a crime cannot be tried according to law? Where is the man able to deny it? It will not do, as an answer to this question, for gentlemen to come in here with their special pleadings and say that we have these rights now. Gentlemen know better. The objection to this section comes from a prejudice against what is called an innovation.

The delegate from Centre, formerly Governor of the Commonwealth, (Mr. Curtin,) sits in my front; and when he was Governor of this State, and he will bear witness to the truth of what I say, many of the applications that were brought to him for pardon were based

upon the fact that the man for whom the pardon was asked had been improperly convicted. He submitted such cases to the Attorney General, and the Attorney General examined the testimony as submitted to him by the counsel, and upon the strength of the Attorney General's report upon that testimony the Governor granted a pardon.

But what is a pardon to a man who is not guilty? What does pardon mean? A pardon means that the person pardoned has committed a crime, and that because he has committed a crime the only way in which he can escape from the prison to which he has been unjustly, illegally consigned, and restore his reputation, is by the Executive clemency. I want no pardon! If I am charged with crime, try me according to law; let me have my testimony offered according to law, and if the judge rules it out, let me have a bill of exceptions taken. If he refuse my testimony, let me have my bill of exceptions taken to that, and let me carry my case to the court of last resort. Then if I am guilty, let me suffer proper punishment; but do not expose me to the malice or to the stupidity of a single judge whose action blasts my life and consigns me to the penitentiary.

You talk of your libel law and you have wasted hours and days upon that. The gentleman from Philadelphia (Mr. Dallas) talks of the necessity of amending your libel law, and why? Because malice is the important ingredient of libel, and because just as many judges as there are in your Commonwealth, just so many interpretations will there be as to the meaning of malice. You have it in your hands now to require the judge who is trying a question of libel to take down the offers of testimony, and the exceptions, and then to have the case carried before the court of last resort. I venture to say that if that were done you would see no more such spectacles, no more such anomalies, as was presented in the court of quarter sessions when the same judge laid down the same law differently in two similar cases. No such decision as was made by Judge Paxson in the *Bulletin* case, directly contradicted by the decision of Judge Paxson in the Cathcart Taylor case, could occur if reviewable in the Supreme Court, the court of last resort. The court having the last action of this kind would settle the law finally and forever.

I would remind the gentleman from York, also, who says that he does not know

anything of criminal law and the Supreme Court knows nothing about it, that it is high time that they and he should be educated to it. If the gentleman from York has not learned it, it is high time that he *should* learn. But when a case is carried to the Supreme Court, that court will lay down the rule, and that rule will be a guide in all cases of the kind.

Why should an editor of a paper who comments upon the conduct of an official, or of a private man, not be tried according to law? Why should his paper be ruined, and why should he be consigned to the walls of the penitentiary if he is unjustly tried and illegally convicted? And why should we hold out to him only the poor boon that he may go to the Governor upon his bended knees with tears in his eyes, and with his sorrowing family behind him, to beg for a pardon? Great God, talk to me about grace! What I demand is of right! I want no grace, no favors. How are we answered here? The gentleman from Luzerne, (Mr. H. W. Palmer,) with lofty disdain, declares that this section is nonsense. "It is nonsense," says he, and with this stately and convincing argument he slips into his seat. This idea of "nonsense" is not argument. Let that gentleman or any other give us an intelligent reason—

The *PRESIDENT pro tem.* The gentleman's time has expired.

MR. BEEBE. I do not rise to speak upon this question with any expectation of enlightening this Convention, but as the lowest citizen of this Commonwealth and of every true and free government has rights which should be protected by law as well as the highest, any government which fails to give that protection is a failure of itself, and contains the seeds of its own destruction and dissolution. So I have the right, and I intend to give my views in a few words on this subject in relation to some of the arguments made by gentlemen upon this floor against the proposition.

There is a common sense in this question as in all others that addresses itself to every delegate; and when the question now pending came up yesterday, not having been present when it was before discussed, I was open to conviction, having no settled opinions, but the arguments presented here have led me to look at the question in a different light and to take a different side from that to which I had previously inclined on this subject. And, sir, when I see the leanness and

paucity of the arguments advanced by gentlemen here upon the negative who pretend to be able and competent to discuss this question, I am led to believe that the principle is right; and where a principle is at the bottom, the mere question of expediency is nothing to me.

Let us look at a few of the arguments. The first gun was from the gentleman from Luzerne, (Mr. H. W. Palmer,) and what did the argument amount to? As the gentleman last upon the floor remarked, it was, first, nonsense; second, cost, it will cost more; third, the old cry made here of ignoring the rights, ignoring the principles that underlie our government, and the stale argument that our judges of the Supreme Court must continue to be wine-d, and dine-d, and humored, and permitted to have their leisure, take a longer lease of life and not be over-worked!

Why, sir, this argument is so absurd and is so degrading that I have not, nor can I find, words to express my contempt of it. That the right of any citizen of this Commonwealth should be prejudiced for the comfort and convenience of the judges of our Supreme Court is an absurdity; it is a degradation. Why, sir, when I hear gentlemen, renowned for their learning and intelligence, get upon this floor and put forth their paltry arguments for the convenience and comfort of the Supreme Court, I am reminded of the great Vishnu, god of the Hindoos. Take any ordinary man and put him upon the Supreme bench, and from that moment he becomes sacred and consecrated, "crowned, sceptred and enthroned," and every man must be expected to bow down and worship at his shrine and sacrifice rights and principles of government for the great god so enshrined by the tenor of the gentleman's argument. I come now to the argument of the gentleman from Lycoming, (Mr. Armstrong,) and it sums up just like this: He does not deny the principle; he does not deny that the wrong may be, that it is open to, but he says he does not know of cases where a principle that is right and not established by virtue of the law of this Commonwealth has been innovated upon.

Then, again, this morning we have from the learned gentleman from York (Mr. J. S. Black) a statement that it is absolutely unnecessary, as derived from his personal experience. Mr. President, I accord him fully the conviction, on account of his own integrity and justice of charac-

ter; but as he remarked in a parallel case here the other day, I do not consider him a competent witness for the very reasons which he gave why our friend Judge Woodward, of Philadelphia, was not a competent witness in a parallel case. He cannot speak from experience, or from which he has a practical knowledge or upon which he was concerned, whereby the rights of any person were infringed. But, let him be an attorney of the Commonwealth of Pennsylvania, paid to convict the wrong man, and securing his punishment, and I apprehend that he at least would have felt the force of the argument of my friend from Montgomery county (Mr. Hunsicker;) and that we have had such cases in the Commonwealth of Pennsylvania is not to be denied.

I am aware that at this present time in cases of this kind, cases that affect the rights, liberties, and privileges of the citizen of this Commonwealth which are endangered from the fact that there is a popular sentiment that crime is rampant, stalking abroad throughout the land, and the popular sentiment cries for blood; and I am only astonished that it should affect the grave dignitaries of this Convention, who have been judges upon the supreme bench and judges of the court of common pleas and lawyers, who understand that it should be their duty to ignore any such state of public feeling in judging of this question at this time.

The gentleman from York remarked that criminals were constantly escaping, and referred to the State of New York as proof. Now, there are two classes in every community; there are the wealthy, the distinguished, those who have money, who commit crime, and they are the persons who are represented by the public press, and they are the persons who through their money and the corruptions of the times are escaping; but while they are, the same corrupt principle may consign to the penitentiary, may consign to the prison the humble individual whose rights are thereby disregarded. Besides, sir, the adoption of this section will prevent largely the use and *excuse* for the abuse of the pardoning power, as has been asserted over and over again upon this floor. Again, as we are about to dispense with associate judges, it leaves the lives and liberties of individuals often almost entirely at the mercy of a one-man power; and however honest judges may be, I know at least one instance, years ago,

where I bowed my head in shame at the ruling of a judge, a ruling actuated by an excited popular frenzy in a case pending; and yet, sir, I believe that judge to have been a well-intentioned and honest man, but he had the weaknesses that many men have under similar circumstances.

Mr. BARTHOLOMEW. **Mr. President:** I desire to give a view which I have taken of this matter, for the benefit of my brother delegates, with the faint hope that it may have some effect, that it may convince them that this section, as it now stands, is wholly wrong and that the amendment proposed by the chairman of the committee is right.

We have had very much eloquence expended upon what have been denominated "glittering generalities," and such like, but if we come to examine this question, as I think we should examine it, we shall obtain the fact that the administration of criminal jurisprudence is but a branch of the government. It is a part of the governing or ruling of society, the same as the enforcement of laws for civil rights, the civil administration of justice. They stand upon entirely different foundations; upon bases that are wholly unlike, the one simply as the ascertainment of rights between citizens; the other as an ascertainment of rights between the Commonwealth, or the State, and one charged with an offence. The object of criminal law is the protection of the whole body politic. To ensure that protection, the administration of criminal jurisprudence should be speedy and should be certain.

What is the policy of our Commonwealth in relation to jurisprudence? Let us look first upon the progress of times that have gone by. We remember well when every felony was punishable with death. A few were excepted; a few perhaps had the benefit of clergy. In such a day as that we had refinement of criminal pleading. Bills of indictment were filed with particularities, and particularities that were bound to be complied with, for the purpose of the protection of the life and the liberty of the citizen.

When capital punishment for felonies less than the grade of homicide had been abolished the administration of the technicalities was to a certain extent relaxed, until at our day, in 1860, in the Commonwealth of Pennsylvania, we adopted what is known as our penal code. In that penal code we have adopted the

merciful policy of fixing the maximum of punishment, allowing a judge to impose a punishment limited in its extreme, unlimited as to its minimum. We have relaxed the rule of criminal pleading simply because of the fact that the punishment itself is within the discretion of the court.

We have loosened and relaxed all of those strict technicalities in pleading, and for what reason? What reason can any gentleman assign to his own mind why this was done? For the purpose of facilitating the speedy conviction of criminals, for the purpose of rendering it more certain that punishment would follow crime. That was the object and intent of the adoption of the criminal procedure in the penal code of 1860, that there should be some degree of certainty in the conviction of criminals.

If it be true that the good order and the peace of society rest upon the speedy and certain conviction of criminals—and I take it that it is true and that no man can question it—if you once incorporate in your system of laws such a thing as a doubt or a hope that conviction shall fail by reason either of delay or multiplicity of tribunals, that moment you loosen the bands that hold the criminal in fear and you let him loose upon your society to commit ravages and to despoil property and life, without fear and without punishment.

Therefore, I take it that it is for this object and this object alone that the whole policy of our criminal law has been built from its foundation upward. We have seen it grow, not only in our experience, but in the experience of other men; because no nation makes law for itself, but it gathers from all nations. It is a temple that has grown from the days of Adam, and it has gathered from all people, in all climes, rearing itself aloft for the benefit of mankind. We are to impart and plant our handiwork upon it, not tear away and deface, but to do that which is proper for the advancement and improvement of the administration of justice to all men.

Therefore I say that the great harm that you can do, the great destruction that you can impose upon this temple, is to tear away that certainty in the commission of crime of its speedy punishment, which is all that the criminal fears. Let us have tribunals that shall follow the commission of crime with trial and punishment; let the punishment be executed immediately; and then you will

have that which all peoples and all societies should have—order and peace.

I take it that you cannot point to an example in any State of this Union where they have adopted this principle, where there can be such a thing as cheating justice by technicality, by going hither and you appealing to this tribunal and to that one, that crime does not run rampant and stalks abroad by night and by day. Therefore I take it that as it stands upon an entirely different principle from that which regulates the affairs between man and man; it is a question of the State. Now, the State has established tribunals which it has said shall be final in certain determinations. In this administration of justice we have a mansion high, with many chambers; and we have erected there a chamber and we have given that to the administration of criminal justice. We have said the great object of criminal law is to make it speedy and certain. We have established that as a tribunal, giving it ample powers and giving it a final jurisdiction, that we may accomplish the great end of all criminal jurisdiction, to wit, speedy and certain punishment.

Therefore I say that if you adopt this principle, if you assimilate it to the question of individual rights, upon its face, it stands precisely upon the footing that it has been placed upon by its advocates; there is no difference. If in the one case there should be a writ of error, so there should be in the other. But I say it stands upon an entirely different basis, upon a different proposition. One, as I have said before, is the adjustment of right between individuals; the other is for the peace and order of society between the Commonwealth and the individual, where the only way to enforce peace and order in the community is to follow the commission of crime with certain and speedy punishment.

Mr. ARMSTRONG. Mr. President: I do not desire or intend at all to enter into the discussion of this question, but I rise to explain what I think is a misapprehension of the gentleman from Montgomery (Mr. Hunsicker.) I do not understand at all why there should be so much feeling upon this amendment, or why it should be manifested upon this floor.

Mr. HUNSICKER. I have no feeling at all.

Mr. ARMSTRONG. I offered the amendment because I believed it would very materially improve the section, and that in its general and sweeping condition as

it stands now in the article, the section would be extremely dangerous. I remarked, in modifying my amendment, that I hoped the amendment would pass, as it would render this section unobjectionable. I also added that I did not see any very great importance in the adoption of the section at all; and yet I can see that there is some advantage, not of great consequence, in putting it into the Constitution, as I said yesterday, that it may be a constitutional right. I will not enter upon the discussion now. I trust that we shall not be hurried by the force or vigor of declamation and argument into acting under excitement. Let us act upon this with cautions deliberation, as men who must look at their work years after the excitement of the occasion has passed away. I think, with the amendment proposed, that in all indictments for manslaughter and in such other criminal cases as may be authorized by law, the section is not objectionable.

Perhaps I may be indulged in making just one other remark. If we put this section into the Constitution in its general form, it is without limitation, without control; and it is a subject which essentially needs limitation and control, and therefore it ought to be left to the Legislature. If there is any one subject that we may safely trust the people in, it is in the preservation of their own personal rights and liberty, and I believe that this section, as it is somewhat of an experiment in constitutional law, ought to be so left that the Legislature may modify by any enactment upon the subject as the exigencies of years may demonstrate to be necessary.

I will not prolong the discussion. The question has been already greatly discussed, and I presume it is best, if gentlemen here are prepared, to vote upon it.

Mr. SHARPE. Mr. President: I do not propose to discuss this question. I am in favor of the amendment of the gentleman from Lycoming. I think it is an improvement upon the present system of Pennsylvania, because it gives a writ of error in a homicide case as a matter of right. As it now stands under the statute, in order to have a writ of error the defendant must procure a special *allocatur*. In that respect, therefore, I think that the amendment of the gentleman from Lycoming is an improvement upon the present statutory law of the State. But I desire to call the attention of the gentleman from Montgomery to a reason which I consider

insuperable against the passage of the original section. By an examination of the section it will be discovered that, except in capital cases, the writ of error is not to be a *supersedeas*. Suppose a man is tried for burglary and is convicted and sentenced to the penitentiary, and the judge refuses to certify that it is a case proper for review, then the writ of error is not a *supersedeas*.

MR. HUNSICKER. It is provided by act of Assembly that it shall be now. I only say in this section that it shall not be except in capital cases.

MR. SHARPE. The language is this: "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."

MR. HUNSICKER. In capital cases it shall be a *supersedeas*, the section says.

MR. SHARPE. But I am commenting upon the section itself. It says it shall not be a *supersedeas*. Therefore, the man may be convicted and sentenced. Now, suppose the judge refuses to certify that there is a proper case for review; you go to the Supreme Court; you procure a reversal of the sentence; the man is in the penitentiary. Then he must be brought out of the penitentiary for a second trial. Suppose he is convicted again; then he is taken back to the penitentiary. Can we tolerate such a condition of affairs as that in this State?

MR. BIDDLE. Mr. President—

The PRESIDENT *pro tem*. Did the delegate from the city speak on this subject yesterday?

MR. BIDDLE. I have not spoken at all upon it. I spoke a good deal on another subject yesterday.

MR. President, no blow can be successfully struck at the rights of the meanest individual in a free government without inflicting a grievous wound upon the whole body politic; and if we do, as we assuredly ought to do, place life and the enjoyment of liberty above the enjoyment of mere transitory possessions which come and go without greatly affecting either the social position or the happiness of the individual, I cannot conceive, after listening attentively to all the arguments, why a man whose character and whose liberty are involved in a judicial trial has not the same natural right to have the law applied to him as correctly in that case as in a case involving a mere

paltry sum, the gaining or the losing of which cannot seriously affect him.

I desire gentlemen to bear in mind that every advance in criminal law has been made in the face of precisely the arguments that have been urged against this change to-day. They have been extorted as it were from an overruling sense of justice. The arguments *ab inconvenienti* drawn from supposed experience have always been urged the other way. Thus, when it was proposed to swear the witnesses of a man on trial for his life, or for any other criminal offence, precisely the same argument was used. It was said, "the court will be burdened; it is unnecessary; it takes up time; offenders should be punished; criminal justice should be speedy." So when it was proposed, having allowed it in treason cases, to permit a prisoner to be heard by counsel, it was said, "what a farce! what a folly! How much time will be consumed! An advocate will get up and skillfully array the facts so as to bewilder the jury, and criminals who deserve punishment will go unwhipped of justice." These have been the arguments always; and yet what man living in a civilized country would go back to that barbarous state in which while the crown, the Commonwealth's witnesses are sworn and go before a jury endued with a factitious superiority, the poor, shivering criminal is only half heard!

Now I do not know, I cannot say so far as my personal experience goes, for it is very small, whether men have been unjustly convicted or not. I have my own opinions. I believe the Constitution in one vital point, that which in the city of Philadelphia required the presence of the president judge in every capital case, has been stabbed again and again, even under judicial authority. But I know this: If there be reason for a change there is much greater reason for it in this Commonwealth than there is in the Kingdom of Great Britain. Do not gentlemen know that the first judges of the land there compose a central criminal court, and that no matter how small the offence is, no matter how trifling the doubt upon the reception of a point of evidence, the judges there faithfully reserve the points and have them reviewed by the whole court, which really is a hearing upon a writ of error, or substantially the same thing? No man can pick up a volume of Carrington and Payne's Reports without being struck with that fact. I say this from having

gone over every volume of English common law reports in the way of business; and while amazed, I have been most agreeably excited to find the care which the law there in the mother country throws around the rights, the possible rights of the meanest man. He must not only be morally wrong, but he must be legally guilty before he can be convicted. He must have the law expounded correctly, or else in the apprehension of that tribunal he stands precisely on the same platform as the innocent. He may be a bad man; very few men are perfectly good; but unless he has committed a crime as defined by law, he goes, as he ought to go, scot free.

I do not believe, and I appeal to the gentlemen who sit around me, that any such results as the arguments *ab inconvenienti* seem to suppose would follow from the extension of this writ of right, which is now a mere writ of grace depending upon the *allocatur* of the judge. I do not believe the Supreme Court would be overburdened with cases. I have authority to say that so far as the well-founded belief of gentlemen of large experience on this subject goes, a very small percentage of cases would be taken up, possibly not five per cent.; possibly a much smaller proportion. But I do not care for that. I cannot meet the argument of the gentleman from Montgomery by that sort of reason. If the judicial force is not strong enough to see that complete justice be done to every man in the community, then make it greater. That is an argument not to be addressed to a free people; and when you have twenty, thirty, perhaps forty, different tribunals in this State, there is an eminent propriety in having them all, as well concerning the criminal law as the civil law, subjected to one tribunal which may lay down a correct standard by which every one may be judged.

I put myself, as I think every gentleman ought to in discussing this case, just in the position of one of those men standing up for trial for everything that is dear to him. I naturally say to myself, "if a hundred dollars is so valuable a sum, is so great an interest as to be reviewed from court to court with all the eagerness of contention which advocacy will bring to bear upon it, then whether a man shall be consigned to the penitentiary or not deserves at least an equal hearing," and I have no answer to those arguments. I therefore shall vote for

this section. I have thought much upon it. I was greatly impressed with the proposition when it was started before, and without anything but a desire to bring into harmony what I believe should be the great principles of jurisprudence everywhere, on this particular subject, I shall cast my vote in favor of the section as reported.

Mr. ELLIS. Mr. President—

The PRESIDENT *pro tem.* Has the delegate spoken on this subject before?

Mr. ELLIS. I have been a listener from the beginning until now, and I do not rise to prolong the discussion or to weary the Convention with any extended remarks; and were it not that I desire to state one single point which perhaps may not have presented itself to the minds of other delegates upon this floor, I would not detain the Convention one moment.

Yesterday the Convention reserved in the first section of this article a power in the Legislature to create such other courts from time to time as they may deem desirable for the business of the State. Had I been here I certainly should have earnestly desired to have that clause stricken out of the Constitution of the State of Pennsylvania; but, not being here, it stands now as the adopted sense of this Convention, that the existing Constitution upon that subject shall remain. What is the effect of it? In the district which I do not represent, but in which I reside, that of Schuylkill, we have a court of extraordinary criminal powers; a court created in a political excitement, created for a political purpose, an anomaly in the criminal jurisprudence of the State; a court in which one judge sits to try a man not only for larceny, or assault and battery, but for the highest crimes known to the law, and upon his ruling alone and upon his judgment and sentence, of course a jury always concurring, a man may be hung. By the vote of Dauphin and Lebanon a judge is placed upon the bench in Schuylkill, one single judge, having jurisdiction over all crimes committed in the county of Schuylkill, and his rulings, singly and alone, determine all questions of law relating to those crimes. Mark it, gentlemen, what exists in Schuylkill may at any period of time in the history of Pennsylvania, now to come, exist in any county of the State of Pennsylvania.

Now, in order that some balance-wheel may exist, in order that some sheet-an-

chor may be provided, in order that there may be some uniformity in the decisions upon the lives and liberties of the people of Pennsylvania, some stability, something on which they may rely, I hope and trust that the section as amended in committee of the whole, on the motion of the gentleman from Montgomery, may be maintained in the Convention. We ought to have a right to have the liberties of the people clearly and firmly established by the court of last resort; and while we leave in the first section of this article a means by which the Legislature may establish extraordinary, unheard of, and exceptional courts in every portion of the State, I trust we may retain a power somewhere that the rulings of these courts may be uniform and liberty may be secured according to law.

An effort has been chivalrously made in this Convention to establish the right of newspapers in libel cases, and they have been given a provision worse than that of the old Constitution, but if you retain this section by which the Supreme Court can define what shall be the testimony in libel cases, and what shall be the rulings of the judges below, you retain a principle in the law more valuable than if the first amendment offered by the gentleman from Philadelphia (Mr. Dallas) had been adopted. I regard the uniformity of the rulings, that sense which is accumulated by the experience of all the districts and concentrated in the judgment and wisdom of the Supreme Court, as better than any law laid down, even in the Constitution, which is to be administered by the different judges in the different districts of the State. While you retain this great weakness in the Constitution, the power in the Legislature to establish exceptional courts all over the Commonwealth, I trust you will place in the Constitution some power to supervise and lay down one uniform rule that the people of the State may rely upon for the protection of their lives and liberties.

The argument made by the gentleman from Montgomery, (Mr. Hunsicker,) in relation to the question of right is totally unanswerable. Gentlemen meet it by saying, "the Supreme Court is overburdened and this will add to their business." Such a miserable argument ought to find no countenance on this floor. We are dealing with principles and should deal with nothing else; and if the Supreme Court has not the power to dispense justice as justice ought to be dis-

pensed by that high court, it is our duty, and we are miserable recreants if we do not provide the means of meeting these exigencies. It is a question of right, and if the Supreme Court have not the power to administer that right, it is our duty to give them that power. Can it be said in a State of three and a half millions of people, an empire in itself, a State with as much brains as any other State in the wide world of the same population, cannot provide the means for a Supreme Court that will lay down those principles that ought to govern so great a State as this? Such an argument I think ought not to weigh the weight of a feather in a Convention of this character.

Now, sir, I repeat, inasmuch as the power exists in the Legislature to create all sorts of courts for the trial of all crimes, we ought to retain somewhere, as this section does, the means of regulating and establishing uniform rules in relation to the trial of crimes.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Lycoming (Mr. Armstrong.)

Mr. KAINE. I call for the yeas and nays.

Ten delegates rising to second the call, the yeas and nays were ordered.

Mr. EWING. Let the amendment be read.

The CLERK. The amendment as modified proposes to make the section read as follows:

"In every indictment for homicide, and in such other criminal cases as may be authorized by law, the accused, as well as the Commonwealth, may remove the indictment, record and all proceedings to the Supreme Court," &c.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bartholomew, Black, Charles A., Black, J. S., Brown, Buckalew, Calvin, Carey, Carter, Church, Corbett, Cronmiller, Darlington, De France, Dodd, Finney, Fulton, Gibson, Guthrie, Hanna, Hay, Hazzard, Horton, Kaine, Landis, Lawrence, Lilly, MacConnell, Minor, Mott, Palmer G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purinan, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Struthers, Wetherill, J. M., Woodward and Wright—48.

N A Y S.

Messrs. Ainey, Alricks, Baker, Beebe, Biddle, Bowman, Boyd, Broomall, Bullitt, Campbell, Cassidy, Cochran, Corson, Dallas, Edwards, Elliott, Ellis, Ewing, Fell, Funck, Gilpin, Harvey, Hemphill, Heverin, Hunsicker, Knight, Lear, Littleton, MacVeagh, M'Clean, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Porter, Read, John R., Ross, Simpson, Smith, Henry W., Stanton, Temple, Walker, Wetherill, J. Price, Wherry and Worrell—46.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardsley, Bigler, Brodhead, Clark, Collins, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Green, Hall, Howard, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Van Reed, White, David N., White, Harry, White, J. W. F. and Meredith, *President*—39.

MR. HUNSICKER. I now move to further amend the section by adding after the word "homicide" the words "and felony."

I do not now intend to discuss this amendment, but it will remove the objections that were offered to taking every case of assault and battery and of fornication before the Supreme court, and this objection was the principal one that seemed to exist in the minds of the delegates. Therefore, without intending to discuss it, I call for the yeas and nays.

MR. HEMPHILL. I second the call.

THE PRESIDENT *pro tem.* Is the call sustained?

More than ten gentlemen rose.

THE PRESIDENT *pro tem.* The call is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken and were as follow, viz:

Y E A S

Messrs. Ainey, Alricks, Baker, Beebe, Biddle, Bowman, Boyd, Broomall, Bullitt, Campbell, Cassidy, Cochran, Corson, Dallas, Dodd, Edwards, Elliott, Ellis, Ewing, Fell, Funck, Gilpin, Hanna, Harvey, Hemphill, Heverin, Hunsicker, Knight, Lear, Littleton, MacVeagh, M'Clean, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Porter, Read, John R., Rooke, Ross, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Walker, Wether-

ill, John Price, Woodward, Worrell and Wright—51.

N A Y S.

Messrs.—Achenbach, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Bartholomew, Black, Chas. A., Black, J. S., Brown, Buckalew, Calvin, Carey, Carter, Church, Corbett, Cronmiller, Darlington, De France, Finney, Fulton, Gibson, Guthrie, Hay, Hazzard, Horton, Kaine, Landis, Lawrence, Lilly, MacConnell, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Russell, Sharpe and Wetherill, J. M.—42.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardsley, Bigler, Brodhead, Clark, Collins, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Green, Hall, Howard, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F., and Meredith, *President*—40.

THE PRESIDENT *pro tem.* The question recurs on the section as amended.

MR. ALRICKS. I move to further amend by adding after the word "felony" the words "prosecutions for libel."

MR. ARMSTRONG. I trust that we shall not have any further attempts to reverse the decision of the Convention by piecemeal. The Convention has already placed this section into a form which sufficiently protects every right that ought to be protected. Let us now leave the rest to the Legislature, where all rights not cared for here may be properly protected and regulated.

The amendment was rejected.

MR. BUCKALEW. I now desire to have the section as amended read.

THE CLERK read as follows:

"In every indictment for homicide and felony, and in such other criminal cases as may be authorized by law, 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."

Mr. BUCKALEW. I would suggest that the section read "such homicide and all such other felonies."

Mr. CASSIDY. That is right.

Mr. BIDDLE. Yes, homicide is a felony.

Mr. MACVEAGH. Make it read "that all cases of felonies."

Mr. HUNSICKER. I agree to that.

Mr. BUCKALEW. Very well; I am satisfied.

The amendment was agreed to.

Mr. BUCKALEW. It will now be seen that according to this section the Commonwealth and the defendant are put exactly upon the footing of parties in a civil case. If we are to have this apply to all cases of felony, I should like to know where we are to stand. In the case of the acquittal of a defendant on a charge of felony, the Commonwealth is authorized to take the record into the Supreme Court and have it reviewed. During the trial the district attorney can make offers of testimony in writing or can object to offers made upon the other side, and can spread all that matter upon the record of the case and take bills of exceptions; and in all other respects the trial will be substantially as civil causes are now tried.

Now, let us understand where we are and where we are drifting. As a matter of course, the duration of criminal trials in the State may, upon the average, be doubled. We know how it is now. The counsel upon each side in a civil case are continually raising questions for the decision of the court and taking bills of exceptions to evidence for review; and on motions for a new trial or for arrest of judgment exceptions may again be taken. They draw long and elaborate points and submit them, on which the jury is to be charged, and then exceptions are taken to the rulings of the court.

Now, sir, I undertake to say that if you are to accept this system you must increase your judicial force. You would be obliged to increase your judges for the city of Philadelphia, and I take it for granted you will require as many judges as you now have in Philadelphia to hold your criminal courts alone. How is it with counsel in a criminal case? According to the rule laid down by Lord Brougham in the Queen's case the lawyer is to know no human being upon the face of the earth except his client. He is to fight for him at the expense of everybody else. He is to disregard the public interest that may be involved in the speed and expedition with which cases are to be tried.

Every possibility of catching the judge is to be embraced, every opportunity of advantage to his client to be seized upon and worked to the utmost, from the beginning of the case to the end.

Now, you will have to change altogether the character of criminal trials in these cases. At present they are a sort of popular proceeding. The jury is the tribunal designated by your Constitution mainly for the trial of these cases. The judge sits by to see that proper evidence is produced and give instruction from time to time on general principles. Instead of fighting the case as a civil case is fought, upon offers and objections and bills of exceptions and other minute proceedings, the counsel takes his case to the jury as the popular tribunal, and it is argued, and when the jury have decided in nine cases out of ten, in nineteen cases out twenty, that is the end of controversy.

Mr. President, I intended to speak to one or two other points, but I am appealed to by a gentleman near me to allow the vote to be taken.

Mr. MACCONNELL. Allow me to ask the gentleman a question before he sits down. As the law stands now, it is a limit to the Commonwealth entirely. Under this provision will the Commonwealth be allowed to take a writ of error when the defendant has been acquitted, and have a chance to have it reversed?

Mr. BUCKALEW. What then?

Mr. MACCONNELL. What will be the effect of that? Will that subject the defendant to a new trial?

Mr. BUCKALEW. You will have two inconsistent provisions in the Constitution—one that a man shall not be put in jeopardy twice and another provision that the court may reverse the conviction or the first acquittal. What is the Supreme Court to do? Is it to order a new trial or is it stopped there? Suppose it sends a case down for a new trial, and the man is tried over again and acquitted, what are you going to do then? Let him sue the Commonwealth for the damages he has sustained by the former conviction? Will you authorize him to sue the Commonwealth? I beg gentlemen to look at consequences. Now the Legislature has complete control over this whole subject. We do not need any provision to authorize action, and I am disposed to leave the matter with the Legislature.

Mr. HUNSICKER. I desire to offer an amendment—

Mr. RUSSELL. I move to strike out the entire section and insert the following:

"In criminal cases the party accused, as well as the Commonwealth may, under such regulations as may be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the Supreme Court."

Mr. HUNSICKER. I object to that; that cannot be done.

Mr. RUSSELL. Why not?

Mr. HUNSICKER. We have just voted on that.

Mr. RUSSELL. Mr. President: I would only remark that that is a provision in the present Constitution, and it is all that we need upon this subject. It will leave the whole matter, as the gentleman from Columbia remarks, with the Legislature.

Mr. MACVEAGH. Mr. President: I trust the Convention will not be driven from its support of this section by the wholly imaginary difficulties that have been suggested concerning it. There is no difficulty at all in striking out the provision giving the writ of error to the Commonwealth, and it ought to be stricken out, and I suppose it would have been if the amendment for that purpose, primarily offered, had not been withdrawn. That being done, you get rid of the difficulty.

The argument of the gentleman from Columbia goes the entire length that the trial of a man for a grave felony, arson or burglary, is of less comparative importance to the community than the trial of a trifling trespass. It is not so, and it is one of the evil signs of the times in which we live that character and personal liberty and the right of redress for injuries to your person and your character are of no consequence whatever as long as you do not touch a man's pocket. Give him his money, you cry, and if you do not pay it to him every court in the Commonwealth shall investigate his reward. Do not talk about the accumulation of judicial business. This Convention declares, and the Legislature has long declared, the five learned judges of the Supreme Court shall decide the rights of property, however trivial. Take the history of a civil cause, however trifling.

First, a justice shall hear and decide it, and then arbitrators shall hear and decide it, and then a court and jury shall hear and decide it, and then the Supreme Court shall hear and decide it; but if a man is charged with a grave crime, a crime which makes all the rest of his life

a burden to him and his children, he shall be simply remitted to the uncontrolled discretion of a county court judge, elected, too, by the people. An elected judge of the county court shall pass upon everything except the breaking of his neck! In that case you allow him to go to the Supreme Court. Right there, in the county in which the crime was committed, where the popular mind is excited, he is to be tried and no redress given him! You say your courts are clogged. Clogged! Have the courage to put a pecuniary limit on your civil cases that go to the Supreme Court, as the nation has done in the cases that go to the Supreme Court of the United States. Draw a line upon the rights of personal liberty and of private character and of private property alike. Say that arson is worth as much attention as \$500; say that burglary is worth as much attention as \$500, and that neither of such cases nor a case involving less than \$500 shall be taken to the Supreme Court, and then you will have plenty of time.

It is not true that every man has a right to have his case reviewed in the Supreme Court. It is the duty of a civilized society to furnish a court of appeal where legal principles may be decided and where individual cases of sufficient importance shall be reviewed in order to furnish precedents for inferior tribunals, and at least to draw a horizontal line between these classes of cases. Put the trifling little petty squabble about a civil trespass on the footing of a small misdemeanor, but do not put such a trespass and the trial of a man for a felony on the same footing. There is no difficulty in doing it, and the Supreme Court will then have ample time. Finally, I submit again that this theory that the rights of property are the only sacred rights, and that personal liberty and private character are of no importance, is a grave mistake.

I trust, therefore, the Convention will adhere to the vote it has now given; and while I was in favor of the amendment now offered, I was opposed to allowing a misdemeanor to go there without a special *allocatur*; and I am opposed to allowing trifling civil suits to go there without a special *allocatur*. In that way, it seems to me, you can do justice to both classes of causes and to both classes of suitors, and I trust the Convention will adhere to it.

Mr. ARMSTRONG. Mr. President: I only wish to submit a single remark. It is very evident that the friends of this

section have the speaking side of the question. We have to meet in this discussion that kind of magnificent declamation which sometimes urges a deliberative body beyond its line of common sense. Now, sir, where is the evil so much declaimed about to be remedied? Whose right has suffered, whose personal liberty has been abridged? Gentlemen talk about these things by way of turning oratorical sentences, but are such arguments to control the solid judgment of this Convention? Whose liberty has been shortened? Who has suffered, being innocent? Sir, it is easy to indulge in fanciful imaginings, and to build theories upon imagined wrongs, but under the enlightened and cautious administration of criminal law, which characterizes the actions of our courts and juries, we are far more likely to let the guilty escape than to measure out even-handed justice to the guilty. Every circumstance which attends upon the trial of the accused surrounds him with the strongest assurances of his protection against injustice. He stands before the court under cover of a presumption of innocence. The burden of proof is cast upon the Commonwealth, and should the evidence adduced fall short of complete certainty he will be acquitted upon the ground of reasonable doubts. The jury is the judge of both the law and the facts. They stand above and beyond the reach of the courts. It is true the court will expound the law, and should the jury disregard the instructions of the court in returning a verdict of guilty the court has the power, and will exercise it, to set aside the verdict and direct a new trial; but if they disregard such instruction in returning a verdict of not guilty, the court is powerless and the accused must be discharged. The jury may defy the court and the law alike in a verdict of acquittal, and no power on earth dare lay its hand upon the prisoner thus discharged. In the presence of the fact which no one will deny, that substantial justice is attained in the criminal courts, and that in the experience of years no case of innocence convicted can be adduced, of what avail is it to run a parallel between civil and criminal administration? It is the old, thrice told, familiar argument, that for the trespass of a chicken or a turkey, as the gentleman from Dauphin (Mr. MacVeagh) with so much eloquence delights to put it, there may be an action at law to drag its slow length from a justice's

court through the common pleas to the court of highest resort, whilst for an action involving liberty, and jails and penitentiary, and all the rest of the eloquent catalogue of wrongs so pressed upon the Convention, the accused cannot at his mere discretion reach the Supreme Court. Why, the gentlemen in their zeal would not even allow the matter to be subjected to the ordinary precaution of an affidavit that the writ of error is not intended for delay. This exaggeration upon the one side and battling on the other is for effect. The gentlemen must know that they press the argument out of its true relations. If the section had been allowed to stand upon my amendment as adopted, giving a constitutional right of review in indictments for homicide and in all other cases as the law might direct, I could cheerfully have voted for the section, but by adding all cases of felony the section is not only disturbed but is manifestly and grossly unjust. Even petit larceny was a felony, clipping the coin was a felony, and a long list of comparatively trifling crimes are as much included within such description as felonious homicide—whilst misdemeanors of the highest grade, such as perjury, forgery, adultery, seduction and such like, are wholly excluded. Can any man say that this is either just or wise? To follow the lead of the able gentlemen who have discussed the question on the other side, they would give a constitutional right of review in an indictment for stealing a chicken, and ban the perjurer, the forger, the adulterer and the seducer to the unlimited discretion of the Legislature. This is the leading of their argument, and to this conclusion it must come at last. Slight consideration of the question must show that we cannot deal wisely with this question here. It involves intricate and delicate and most important questions of detail.

The whole subject presents itself in a light which strongly urges upon the Convention the necessity of referring the entire question to the Legislature, where it can be considered piece by piece, where crimes can be distinguished according to their enormity, and the necessity of their punishment with promptness can be sufficiently secured. Let perjury, let stealing, let every other crime, great or small, fall within the line of the legislative discretion without constitutional embarrassment. Let our action be such as will allow the Legislature to mete out its justice

not only promptly but with a sound discrimination as to the varying kinds and degrees and punishment of crime.

If this section had stood as amended, allowing a writ of error in cases of homicide, I should have voted for it; but now that its operation has been extended by a line which takes in a vast multitude of little and insignificant cases, which the gentleman from Dauphin himself admits ought not to go to the Supreme Court, and leaves out others which are of great magnitude and importance because they are misdemeanors and not felonies, I cannot but regard the section as an unwise and inconsiderate provision for the Constitution. I repeat that it includes all felonies, however trifling, and leaves out misdemeanors of very great magnitude. Let us then leave this question to the Legislature, where it appropriately belongs. If we cannot trust the people to protect their own liberties, what in the name of all that is sacred in government can they be trusted to do? If rights so plain as these cannot safely be entrusted to the Legislature, which, coming from the people year by year, is in strongest sympathy with its rights and interests, then might we well despair of the Republic. Let this section be voted down, as tending rather to embarrass than advance the administration of criminal law, trusting with confidence to our representatives to neglect no precaution that will cast additional security around the sacred liberties of the people.

MR. HUNSICKER. I would ask the gentleman how the people protect themselves in the enjoyment of their liberty except by their representatives? It is the law-making power that passes the laws that regulate the enjoyment and the mode in which you are to enjoy your life, liberty and property; and where, let me ask the gentlemen, should the people place the safeguards around their liberty but in the fundamental law? And when the gentleman declares that in the case of perjury, forgery, &c., they can not be heard under the section as amended, I say:

"Thou canst not say, I did it; never shake
Thy gory locks at me."

You did it. You and those on your side emasculated this section, and you voted against it. Will you vote for it now? If you will we will put it back; we will restore it where it ought to be and make the remedy as broad as the mischief.

The gentleman asks with eloquence and with a sneer, who has been illegally tried? I have tried to tell him that the great bulk of the pardons that are granted at Harrisburg are upon the ground that the party has been improperly convicted.

I had proposed, Mr. President, if I could have obtained your attention, to move to strike out these things which gentlemen peck at. They try to destroy this section piecemeal and by indirection. I was willing to accommodate the gentleman from Franklin (Mr. Sharpe) and the gentleman from Lycoming by striking out, after the word "accused," the words "as well as the Commonwealth," and inserting "after conviction and sentence." After we shall have disposed of this last covert attack by the gentleman from Bedford, (Mr. Russell,) in disregard of the sense of this Convention as declared on my second amendment, I purpose proposing it again, so that it shall be amended as I have indicated.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Bedford.

The amendment was rejected.

MR. HUNSICKER. I now move to strike out, in the first line, after the word "accused," the words "as well as the Commonwealth," and insert in lieu thereof, "after conviction and sentence," so as to make the sentence read:

"In every case of felony the accused, after conviction and sentence, may remove the indictment, record, &c., the same as in criminal cases."

The amendment was agreed to.

THE PRESIDENT *pro tem*. The question now recurs on the section.

MR. COCHRAN. I move to amend, by inserting after the word "felony" the following words: "Forgery, perjury, embezzlement, false pretense and conspiracy." I wish simply to say with regard to this amendment that I consider this class of misdemeanors to involve as many nice questions of common law in their trial as cases of felony.

MR. MACVEAGH. If the gentleman will allow me to interrupt him, I think that he should bring within the scope of his amendment prosecutions for libel.

MR. COCHRAN. I will modify my amendment by inserting the word "libel" before the words "and conspiracy."

THE PRESIDENT *pro tem*. The amendment will be so modified.

MR. COCHRAN. I think this particular class of misdemeanors are in their nature

of such a character that they should properly be included in this section. I do not offer the amendment for the purpose of embarrassing the passage of the section. I shall vote for the section, whether this amendment is agreed to or not; but to me it seems proper that this peculiar class of misdemeanors should be included in this section. We all know that in the trial of cases of perjury, forgery, embezzlement, false pretenses, libel and conspiracy there are very difficult questions of law often arising; and unfortunately there are one or two of this particular number of misdemeanors here specified that are often perverted from the intent of punishing a criminal offence merely to enable parties under the cover of a criminal prosecution to squeeze their debtors into payment through apprehension. Such particularly is the case of false pretenses. It is very important to guard that particular class of offences from perversion. I think, therefore, that this amendment is proper in itself and ought to be adopted; but if it should be rejected I shall, nevertheless, vote for the section.

Mr. CORBETT. Mr. President: We are in the difficulty in which we now find ourselves, wholly because of our attempt at legislation. In civil causes bills of exception are allowed by statute, and the Legislature controls this whole matter. Until a very late day bills of exception were not allowed even in homicide cases; but lately they have been by act of Assembly; and I have no doubt the Legislature will continue to extend the right of raising questions of error and apply it to other cases.

Now, the very moment we attempt to allow the right of writs of error in criminal cases, it is necessary for us to select the cases. We have had amendment after amendment offered, the last by the gentleman from York, (Mr. Cochran,) and yet he leaves out seduction, one of the most aggravated misdemeanors that can be; and if you examine our criminal code you will find aggravated assaults that are punished as severely and with greater severity than many felonies. It is impossible for us to regulate this matter, and we ought to leave it to the Legislature. The Legislature has full control of the whole subject. A singular feature that is presented here is that we are undertaking to regulate this matter in criminal cases when the whole law with reference to error depends upon statutes, and you say in this section that the re-

moval and review are to be in the same manner as in civil cases.

I submit, Mr. President, that this is not the place to do this thing. We were not sent here for this purpose. We were sent here to make an organic act. We were not sent here to legislate. No great complaints have been made on this subject that we are now attempting to remedy. No great injury has been done. There have been no convictions that I know of that have shocked the sense of the people of the State or of the several counties of the State. Judges are not likely to sentence men who are convicted of crime, unless the proof is full and plenary; they do not do it; and we can trust them. If persons are likely to be convicted on errors committed in the trial of men for crime, it is within the full control of the Legislature, and let us trust the Legislature to provide the remedy. If we attempt to provide remedies in this way, it will run us into endless difficulty.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Cochran.)

The amendment was rejected, there being on a division, yeas thirty-seven, noes forty-one.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. CORBETT. On that I ask for the yeas and nays.

Mr. HUNSICKER. I second the call.

Mr. ARMSTRONG. Before the vote is taken, I desire to call the attention of the Convention to the fact that we have already provided in the third section, speaking of the Supreme Court: "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." Criminal and civil cases are on the same footing.

Mr. HUNSICKER. This section then will do the business.

The question being taken by yeas and nays, resulted, yeas forty-five, nays forty-seven, as follows:

Y E A S .

Messrs. Ainey, Alricks, Baker, Beebe, Biddle, Bowman, Boyd, Broomall, Bullitt, Campbell, Carter, Cassidy, Cochran, Corson, Dallas, Edwards, Elliott, Ellis, Ewing, Fell, Funck, Gilpin, Hanna, Harvey, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, McClean, Mann, Mitchell, Nowlin, Niles, Patterson, D. W., Porter, Purman, Read, John

R., Ross, Smith, Henry W., Temple, Walker, Wetherill, Jno. Price and Worrell—45.

N A Y S.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bartholomew, Black, Charles A., Black, J. S., Brown, Buckalew, Calvin, Carey, Church, Corbett, Cronmiller, Curry, Darlington, De France, Dodd, Finney, Fulton, Gibson, Guthrie, Hay, Hazzard, Horton, Kaine, Landis, Lawrence, Lilly, MacConnell, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Struthers, Wetherill, J. M., Woodward and Wright—47.

So the section was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Bardsley, Bigler, Brodhead, Clark, Collins, Craig, Curtin, Cuyler, Davis, Dunning, Green, Hall, Howard, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Parsons, Pughe, Purviance, John N., Runk, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F. and Meredith, President—41.

The CLERK read the next section 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. KAINE. Mr. President: I do not think we want this section at all. We had better leave the provision upon this subject as it is in the old Constitution. The eighth section of the fifth article of the Constitution provides that:

"The judges of the courts of common pleas shall, within their respective counties, have the like powers with the judges of the Supreme Court, to issue writs of *certiorari* to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done."

I think that is better and more comprehensive than the proposed amendment. I suppose, Mr. President, that what we do not alter in the old Constitution will remain, and that if we fail to adopt a sub-

stitute for a section or an article, the Committee on Revision and Adjustment will arrange it accordingly. That was done by the Convention of 1837-8, and it will, I suppose, have to be done now. We are not making a new Constitution; it is impossible for us to make a new Constitution. We are merely changing, altering, and amending the old one; and therefore what we do not alter or change will remain as it was before. Now, the very provision which I have read from the Constitution of 1837-8 was in the first Constitution ever provided for the Commonwealth of Pennsylvania. In the Constitution of 1776 is contained this provision:

"The judges of the courts of common pleas shall, within their respective counties, have the like powers with the judges of the Supreme Court, to issue writs of *certiorari* to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done."

At that day the judges of the Supreme Court did issue *certioraris* to justices of the peace without going through the inferior courts; and they continued to do so for, perhaps, thirty or forty years after the adoption of the Constitution of 1776. They did it after the Constitution of 1790; but the same provision has been retained in the three several Constitutions, the Constitutions of 1776, 1790 and 1837-8. Therefore I think there is no necessity for changing the phraseology of this provision.

The amendment now proposed reads thus:

"The judges of the Supreme Court and the judges of the court of common pleas within their respective counties"—

Now, you may read that to mean that the judges of the Supreme Court and the judges of the court of common pleas in their respective counties, or you may read it so as to confine it to the judges of the court of common pleas in their respective counties, but a literal reading of it will apply to the judges of the Supreme Court in the counties in which they reside. It is a changing of the phraseology; it is a changing of the meaning, and I see no necessity for it, and I hope it will not be adopted. If it is understood that we are to adopt everything *de novo*, if we are to adopt every provision of the old Constitution, re-enact it by this Convention, then I offer the provision of the old

Constitution as a substitute for this section.

Mr. ARMSTRONG. If the gentleman will allow me to make a suggestion at this point, by a reference to the third section, which the Convention has already adopted, in the closing paragraph it will be found that in defining the jurisdiction of the Supreme Court we say "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." I think that is broad enough to cover it.

Mr. KAINE. Then strike out "judges of the Supreme Court" in the section.

Mr. ARMSTRONG. Yes; those words should be stricken out, and then let the section stand.

Mr. KAINE. I agree to that. I withdraw my amendment.

Mr. ARMSTRONG. I will move it unless the gentleman from Fayette does.

Mr. KAINE. I have made that alteration in my copy. I move to amend the section, in the first line, by striking out the words "of the Supreme Court and the judges," so that it will read:

"The judges of the court of common pleas within their respective counties shall have power," &c.

The amendment was agreed to.

Mr. GILPIN. I move to amend, in the second line, by striking out the word "counties" and substituting "districts." The reason is that if it is hereafter determined that the common pleas courts shall be organized in districts instead of counties, then it will save going back to alter this section, and if it is afterwards determined that they shall be in counties, then "districts" will still cover it, for I notice that the twenty-fourth section says that each county shall compose a judicial district, and therefore the word "district" will have the same sense with "counties" if they are to be counties.

Mr. ARMSTRONG. There is a court of common pleas for every county, although there may be more than one county in a district. I think, therefore, the phraseology is better as it stands. It must be a county court, although it may be included in a district.

Mr. GILPIN. Would not this look as if the judges in a district composed of three counties would have jurisdiction only in a particular county?

Mr. ARMSTRONG. The purport of it, I will remark is that a writ of *certiorari* in a district shall not remove the case

from the county in which it was taken, so that the suitor in cases of appeals from justices of the peace may not be taken to an adjoining county.

Mr. GILPIN. That covers the objection, and I therefore withdraw the amendment.

The PRESIDENT *pro tem*. The amendment is withdrawn. The question is on the section.

The section was agreed to.

The twelfth section was read as follows:

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 electors 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.

The PRESIDENT *pro tem*. The question is on the section.

Mr. MACVEAGH. I call for a division of the section into three parts.

Mr. DALLAS. I move to amend—

Mr. MACVEAGH. The gentleman from Philadelphia is certainly desirous to amend the latter part. I desire to move to amend the first part, and if he will give way—

Mr. DALLAS. Certainly; I give way for that purpose.

Mr. BROOMALL. I ask for a division of the section, the first division to end at the words "three years."

Mr. MACVEAGH. So do I, to come in at the end of the word "years," in the fifth line.

Mr. D. W. PATTERSON. I move also to amend the section in the sixth line.

Mr. MACVEAGH. That would not be in the first division. Let us vote on the first division first.

Mr. HAY. What is the first division?

Mr. MACVEAGH. It ends with "years," in the fifth line.

Mr. HAY. Let it be read.

The CLERK read the first division as follows:

"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."

The division was agreed to.

The PRESIDENT *pro tem*. The second division will be read.

The CLERK read as follows:

"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."

Mr. DARLINGTON. I move to amend, by striking out the word "but," because it has no business there.

The amendment was agreed to.

Mr. D. W. PATTERSON. I move to further amend, by striking out the word "one," in the sixth line, and inserting "two," and making "justice" read "justices," making it read: "No township, ward, district or borough shall elect more than two justices of the peace," &c.

This, I simply wish to state, is the provision of the present Constitution, and I think that we ought, at least in this particular, to observe the existing Constitution as nearly as we can. I never heard of any complaint of electing two justices of the peace in any borough or township. In fact in our county, in some five or six townships, they vote under the existing provision of the Constitution for three, because that number seems to be demanded by the public convenience, if not by their necessities. I hope, therefore, that we shall adopt this amendment and at least make the number of justices two.

Mr. CORBETT. I hope the amendment will not prevail. I know many townships in which it is difficult to get even one competent person to act as justice of the peace.

Mr. D. W. PATTERSON. That is in Clarion county.

Mr. CORBETT. I have not mentioned any county, and I am not on the witness stand; but under this section every township is entitled to one justice of the peace; all that is necessary, if a second or a third is desired, is for the citizens to say so at a public election, and they can have the increase. There are many townships in the State where one justice will do the business better than two, and I hope the amendment will not prevail. It would require an unnecessary number of justices of the peace in many townships. On the other hand, there are undoubtedly townships where two justices are necessary, and this provision arranges for their election. The argument that applies to the amendment applies equally to the section, and therefore the amendment should not be adopted. As the section stands, it allows the townships in every county to have as many justices of the peace as they require.

Mr. BOWMAN. I rise for the purpose of favoring the amendment of the gentleman from Lancaster. Coming as I do from a rural district, I am aware of many townships, and have some in my mind's eye now, in our own county, containing from one hundred to one hundred and twenty-five square miles, where there is a great deal of business done through this useful branch of the judiciary of our Commonwealth—and when I speak of the term "useful" I do so advisedly, as it has been used by the judges of the Supreme Court—and where two justices in opposite ends of the township are a necessity. There should be

provision made in the Constitution for the election of at least two justices of the peace to a township. It may be said that by expressing their will at a public election the people can elect two; but the calling of an election to present the question of the number of justices to the people for their determination is just what I want to obviate.

Let us leave this matter just as we find it in the present Constitution. The men who framed the Constitution of 1837 and 1838 provided that there should be two justices of the peace elected in each township. Nobody has found any fault with this provision. If, as the gentleman from Clarion (Mr. Corbett) says, there are townships where only one is necessary, if two are elected all that one has to do is to refuse to qualify. This entails no additional expense upon anybody, and where the public necessities require a larger number elected, I want them to have the privilege and the right to elect two.

Mr. ROSS. I had proposed to offer the amendment which has been submitted by the gentleman from Lancaster, and I desire now to say that I cordially endorse it. It is simply restoring in the section we are now considering the section of the old Constitution. I was unfortunately absent when this matter was before the committee of the whole, and therefore I have not heard the arguments on the question; but I cannot imagine any good reason for this change, and I cannot vote to make it unless I have some substantial, essential reason for it. In my own county I know that two justices of the peace are essential. They transact a large portion of the business of the county. They are the business agents of the majority of our people. Our people require them, and I think we should still stand where we have heretofore stood in regard to this matter. I sincerely hope that the amendment of the gentleman from Lancaster will prevail.

Mr. DE FRANCE. I only desire to say that the opinions of gentlemen here are very different about this matter. It seems to me that in Mercer county, which has a population of fifty thousand inhabitants, I do not know a single township in which they need two justices of the peace. I suppose in one-third of the townships one of the justices never took out his commission at all, and I cannot see how these officers can be a necessity in small counties, although there must be a necessity for the office or

the delegates here would not speak as they do. But in any event the amendment is not necessary. I hope the report of the Committee on the Judiciary will be sustained, because it will meet any case. If the townships want one, the section as reported will give them one. If they want two, they have simply to vote for that number and they will receive them. I do not see why we ought to retain in the Constitution a provision useless in many counties, in order to satisfy a few who have anyhow a legitimate remedy.

Mr. BEEBE. I trust this amendment will prevail. It is a practical question as between the people and the officers elected. On the side of the officer elected, it is a very nice arrangement. He can by having all the business, make a good living and save money out of his position. But the people may be necessitated to decree the election of an additional officer, and there is no use in compelling them to go to the trouble of holding an election to know whether they will or will not. All familiar with the practice in this respect, under the old Constitution, know that there are many townships of six miles square that are greatly inconvenienced by having justices in the opposite extremes. I trust that we shall not make any innovation for the simple purpose of curtailing the convenience of the people; and that we do when we deprive them of the additional justice of the peace which they absolutely need.

Mr. HAZZARD. I believe that I am the only delegate upon this floor who has the honor to be a justice of the peace. [Laughter.] Those holding that office have been dignified and eulogized by the Supreme Court of the State and by the delegates here as public useful officers, so useful that the Convention is now asked to increase and multiply their offices indefinitely. I am opposed to the amendment. There are some small counties divided into wards, and they will under this amendment have two magistrates in each ward, which is an entirely necessary number. The fact is that in the country it is often difficult to get people to serve in this place, especially in the most rural districts.

A magistrate able to properly administer the duties of his office must necessarily buy some books, costing probably one hundred dollars or one hundred and fifty dollars. He must pay for blanks. He must qualify himself in some

way for this great office, and if you multiply them to the extent that is contemplated in this amendment, the office will not justify any man to accept it, and the position must go begging.

This office is necessary. We must have a committing magistrate in every township, in every borough, and in every little town. We must have these officers before whom we can acknowledge our deeds, and they are useful in many other ways. But if you make too many of them, it will not be worth while for any man to accept the office, because the receipts of his official term will not compensate him for the outlay necessary to open his office. I heard here when this question was discussed before that there were persons who would be glad to serve in these positions for nothing. I was glad to learn that there were disinterested persons of that sort in the north and the west. They are few in the southwest. They desire at least to receive enough fees to pay for the recording of their commissions, and for the purchase of their blanks and books which are necessary in order that they may well understand the forms and the first principles of law. If you increase their number, you will not be able to find men who will administer the duties of the office with dignity, and in our part of the country it will be very hard to get them at all.

But if you allow this section to stand, it provides for an increase of these officers where it is necessary, and the people will soon find out if they need more of this sort of officers. The people can vote upon that question and they like the exercise of that privilege. The oftener they vote, the better they like it; and I understand that in this city they like it so well that some of them go around all day and do it in all the different wards. [Laughter.]

MR. LILLY. I do not believe this question is sufficiently important to waste any more words over it. The amendment is unnecessary, because if the people want more than one justice of the peace in a township, they can have more, and the section gives them one. I think we should vote on the question. It is not important—

MR. NILES. It is important.

MR. LILLY. I do not believe that it is important enough to occupy all this time. I am in favor of giving each township one or two justices or even more, and I believe that the section gives them this.

Therefore I shall vote for the section and against the amendment.

MR. NILES. I desire simply to call the attention of the Convention to the fact that in very many of the rural districts of this State, as has been mentioned by the delegate from Erie, a large rural township may comprise a hundred square miles. There are four or five such townships in the county in which I live. They poll from four to five hundred votes at every election. In these large townships we have no notaries public. It is true, perhaps, that as far as the trial of causes is concerned that it is not an important reason why we should have additional justices, but we use justices of the peace for all the purposes for which in other parts of the State and in the great cities notaries public are employed. Therefore, if you do not adopt the amendment of the gentleman from Lancaster, you will impose an unnecessary, and, I venture to say, an uncalled for restriction upon the people of the rural districts. I undertake to say that even the gentleman from Washington on my right (Mr. Hazzard) has heard no call from the people of the State for the abolition of the office of justice of the peace. It seemed to me that he was speaking like a paid advocate, and that his argument ought not to be allowed to influence our action because of that reason. I can understand very well why he desires that there shall be no more justices of the peace, because he has held that position for twenty years in the little town in which he resides, and he desires to monopolize it for all time to come. He seems to be an interested witness, and any evidence he gives here should have very little force with the Convention.

MR. BROOMALL. The necessity for the last three lines of the first paragraph of this section has been superseded by the eighth section of the article on the Legislature, which covers the whole ground. I therefore move to strike out all of the paragraph after the word "election," in the tenth line. The words I move to strike out are: "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." I will read the section of the article on the Legislature that renders this provision unnecessary: "No person hereafter convicted of embezzlement of the public moneys, bribery, perjury or other infamous crime shall be eligible to the General Assembly

or to any office of trust or profit in this State," covering the whole ground.

Mr. HAY. I desire to inquire of the delegate from Delaware whether the section that he read covers the eleventh and twelfth lines of this section: "Or been removed by the judgment of a court from any office of trust or profit." I do not think it does.

Mr. BROOMALL. In effect it covers it, because if he was removed it would be the result of being convicted of some such offence as is embraced within this language.

Mr. HAY. I think it is a great deal better to have that clearly stated as it is here.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Delaware.

Mr. BOWMAN. When we had this section under consideration in the committee of the whole the Convention will remember that this clause was voted out in the forenoon, and then, at the suggestion of the gentleman from Delaware, (Mr. Broomall,) in the afternoon it was voted in; but that was before we had reached on second reading the report of the Committee on the Legislature. Then the eighth section of the article on the Legislature was voted in, as the gentleman from Delaware says, which was all right.

Let me ask right here, what other office is there in this Commonwealth that you propose to exclude except this office of justice of the peace? None whatever. The eighth section, as the gentleman from Delaware says, provides that if a person shall hereafter be convicted of an infamous crime he shall be disqualified from holding any place of honor, trust or profit under the laws of this Commonwealth. Now why apply this to the office of a justice of the peace when you do not do it to any other in the Commonwealth?

Then the gentleman from Allegheny finds fault and objects that there is no provision if this part of the section is struck out for a case where one of these officers has been removed by the judgment of a court from any office of trust or profit. The Legislature can settle that question. They have done it over and over again. They may say that if the magistrate is impeached or removed from office he shall not be eligible to that or any other office. I do not see what good it can do to retain this provision here and apply it to justices of the peace and none others. If one of these officers is removed

from office, the Legislature can say that he shall not be eligible to another office. If he is impeached upon grounds of misconduct while in office, the whole thing is in the hands of the Legislature. Why make this invidious distinction right here?

I second the motion of the gentleman from Delaware. No gentleman on this floor advocated this clause at the time stronger than he did, and it was through his argument and his eloquence that the provision was carried in the afternoon, which had been voted down in the forenoon. I think the amendment offered by the gentleman from Delaware (Mr. Broomall) should be adopted.

Mr. DARLINGTON. It seems to me that it would be better to take this section as it is, and if this penalty is provided in another part of the Constitution the Committee on Revision and Adjustment can make it right.

SEVERAL DELEGATES. No; no. Strike it out.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Delaware (Mr. Broomall.)

The amendment was agreed to.

Mr. MACVEAGH. I trust I shall not be out of order in saying that it seems to me that Justice Hazzard answers delegate Hazzard. [Laughter.] If the old Constitution produces such justices of the peace as he is, I shall vote to keep it as it is, and therefore I shall vote for the amendment.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lancaster (Mr. D. W. Patterson.)

The amendment was agreed to.

Mr. DALLAS. I now rise to offer the amendment which I proposed to offer a few moments ago. I move to amend by striking out the word "learned" in the seventeenth line, and all that follows that word down to and including the word "their," in the nineteenth line, and inserting the word "whose," so that it will read: "Such court shall be held by judges whose term of office shall," &c.

Mr. EWING. That is not in order now.

Mr. DALLAS. It is to a portion of the section. It is all one section and has all been read.

The PRESIDENT *pro tem*. The question is on the second division.

Mr. MACVEAGH. I ask the Convention to hear the gentleman from Philadelphia now. He will not be here this afternoon, and wants to say what he

has to say on this amendment now. I trust he will be allowed to go on.

Mr. DALLAS. I am anxious to get this matter in before we adjourn for dinner.

The PRESIDENT *pro tem*. What is the amendment?

Mr. DALLAS. I propose to strike out all after "judges," in the seventeenth line, down to and including the word "their," in the nineteenth line, and insert the word "whose" after "judges."

Mr. LITTLETON. I thought we were voting on the division beginning in line eight: "No person shall be elected to such office," &c.

The PRESIDENT *pro tem*. A division of the section was called for, and the regular course would be to dispose of the divisions in their order. The question now is on the second division, ending with the word "borough" in the eighth line.

The division was agreed to.

The CLERK read the next division, 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."

The division was agreed to.

The PRESIDENT *pro tem*. The remainder of the section is now before the Convention.

Mr. DALLAS. I trust I am now in order. I yielded to the gentleman from Dauphin (Mr. MacVeagh) or I would have had my amendment in before a division of the section was called for. I have already stated the amendment, and if the Clerk has it I need not repeat it.

The CLERK. The amendment is in the seventeenth, eighteenth and nineteenth lines, to strike out the words "learned in the law, who shall have been admitted to and shall have had at least five years, practice in the judicial district in which said city is located. Their," and insert the word "whose;" so that the clause will read: "Such court shall be held by judges whose term of office shall be seven years," &c.

Mr. DALLAS. I need only state the purpose of the amendment. I do not propose to detain the Convention with any argument in regard to it. The purpose is simply to provide that the upwards of twenty magistrates for the city of Philadelphia, which this section provides for, shall not be required to be learned in the law. The result of requiring so many magistrates for this city to be learned in

the law, in my judgment, would be simply this: That we should get some lawyers unfit for that position, and unfit for any position whatever to occupy these magisterial offices. They would be made up either of extremely young men, who had no ambition or hopes for the future, or of elderly gentlemen who had utterly failed in the practice of the law in their past career. You would not get any man, young or old, who was fit for his profession, to take one of these twenty or more small magisterial offices upon the compensation and for the exercise of the jurisdiction that you propose to give them; but you would exclude from those offices a number of gentlemen in the city of Philadelphia, retired merchants and men of that character, who would be quite as well able to act in this capacity as any members of the bar whatever.

Mr. TEMPLE. I trust this section will be voted upon before the recess, and therefore I shall be very brief. I regret that the delegate who offered the amendment was not present when this subject was under discussion before. If we had then had his services I do not think this section would ever have been adopted as it was. I certainly concur in all that he has now said; and without undertaking to protract the discussion, because I think we are ready to vote now, I leave the matter, trusting that the Convention will at least strike out that portion of the section which requires this minor judiciary to be composed of men learned in the law. If they should then feel disposed to dispense with the section by voting it down altogether, I think the people of Philadelphia would be just as well satisfied. But if we are to adopt this section at all, I beseech gentlemen not to place in this Constitution the provision which the gentleman from Philadelphia has asked to have stricken out, because if you do you will have established in Philadelphia what I had occasion to say once before would, in my judgment, be the very worst sinks of iniquity ever established in any city in the world.

Mr. KNIGHT. I trust this amendment will prevail. We shall have in this city about twenty-five of these officers, and if we require that they shall be learned in the law and have five years' practice in the court of common pleas, it may put us to very great inconvenience. The crop of lawyers might be shortened. [Laughter.] I mentioned this subject to our worthy President, (Mr. Meredith,) and

he replied: "The poor you always have with you." [Laughter.] But I do not know whether he alluded to the poor lawyers or the lawyers who are poor. [Laughter.] He did not explain that. But, sir, I think it would be very unjust to rule out men of sound judgment and experience from this position, and to require that it should be entirely filled by the class of gentlemen indicated in the original section. I am very much in favor of having a better class of men to fill these positions, and if we could adopt some provision here providing that the parties elected to this office should undergo an examination in the courts, or something of that kind, to ascertain if they were qualified. I do not say that this is the place to do this, but it would be well to act upon it somewhere. I trust the amendment will prevail.

Mr. SIMPSON. I hope this amendment will be adopted, and that the Convention will strike out these words, for two reasons. One of the arguments made yesterday in support of the proposition to abolish the district court of this city was that we should have a uniform system of the judiciary. Now, why should we have a different system in regard to our aldermen and justices of the peace if we are to have uniformity in our courts? Why should not men of respectability be allowed to be elected as aldermen, justices of the peace, police justices, or whatever you call them, in the city of Philadelphia, just as well as they are in the country districts of the State? I think one of the arguments made against the minor judiciary when this matter was discussed before is cured by the mode of election. Instead of being elected in small localities, these officers are to be elected by the entire city, every voter casting his vote for a proportionate number of them, by which means I think we shall secure far better men as nominees and better men in the election. I trust this amendment will prevail and these words be stricken out.

Mr. LITTLETON. I trust the amendment will not be agreed to. This matter was very carefully considered and discussed in the committee of the whole, and the committee reported it as it now stands.

Mr. TEMPLE. I rise to a question of order. My point of order is that the delegate has no right to refer to what took place in committee of the whole. The President reminded me yesterday that I

had no right to do it, and I desire the same rule to be applied to all.

Mr. LITTLETON. I am simply stating a self-evident fact. The provision is here, and therefore it comes from the committee. I am surprised that a gentleman with the experience and knowledge of my friend from the city, (Mr. Dallas,) one who knows as much about the aldermanic system in Philadelphia as he does, should wish to perpetuate it, for his amendment seeks to do that, and that alone. I venture to say that of all the provisions in this Constitution intended for the improvement of affairs in the city of Philadelphia, there are very few that have greater merit than the section before the Convention at the present time. I cannot see why we should not have, if it is possible to get them, judges of these courts who are learned in the law. I do not understand why a man who has never had any experience upon questions of property and the various matters that will come up in such courts if we establish them should be allowed to preside over them. I cannot understand why he should not be educated to the profession just as much as the judge who sits upon the bench. I do hope, therefore, that the amendment will not be agreed to.

Mr. J. R. READ. Mr. President: I trust the amendment of my friend from Philadelphia (Mr. Dallas) will not be adopted. I am entirely in favor of this section as it is reported to us from the committee of the whole, and for this reason: The present aldermanic system of the city of Philadelphia, (and among the body of aldermen are some highly respectable men, for whom I have the highest respect and esteem,) has proven a deplorable failure. Not one of the gentlemen who pretend to be friends of the amendment offered by the gentleman from Philadelphia can stand up in his place and deny what I say. Why, Mr. President and gentlemen of the Convention, since this section has been reported from the committee of the whole two of the aldermen of this city have been and are to-day convicted felons. I think it is well for the Convention to consider the fact that the city of Philadelphia has other and different interests from other portions of the Commonwealth.

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

Mr. J. R. READ. Certainly.

Mr. TEMPLE. I should like to ask the gentleman if he does not know that there

is a number of the city councils also in the penitentiary, and if that is any reason for abolishing that office?

MR. J. R. READ. I have no objection to the gentleman asking me questions when they are pertinent to the issue, but I do not think that the one he asks me now is. He simply interrupted my argument without doing any particular good.

Now, sir, I say that the interests of Philadelphia are entirely different from those of any other portion of the Commonwealth.

MR. EWING. What interests?

MR. J. R. READ. Its commercial interests are entirely different. I should like to go on without interruption if it is possible.

THE PRESIDENT *pro tem*. The gentleman on the floor must not be interrupted.

MR. J. R. READ. I say it requires a peculiar education and a peculiar training to pass upon the subjects that may come before this minor judiciary. Some gentlemen may not agree with me on that point. Then I propose to call their attention to another point, and it is my main reason for advocating the adoption of this section. It is well known that every person who is charged with a crime is brought before these judges. I believe it is the right—if not, it should be—of every citizen of the Commonwealth, and necessarily the right of every citizen of the city, when he is charged with the commission of a crime that his case shall be heard primarily by a person who understands the ordinary rules of evidence, and who knows enough to say when a man is charged with an offence, and evidence is offered of the commission of a crime entirely outside of the borders of this Commonwealth, that he has no jurisdiction over it, and certainly no power to bind the prisoner over to appear at the bar of the courts of this county or of this State, and yet it is a notorious fact that persons are frequently charged before this minor judiciary as it now exists with the commission of crime all over the United States, on the high seas, in England, and on the continent, and the persons charged are as generally as the cases are brought before them always committed to answer at the next term of the court of quarter sessions of this country; and when you call their attention to the fact that they have no jurisdiction over such cases, they treat your objections with contemptuous sneers. Now, sir, I think that personal liberty is

as valuable as the right of possession of the property we own. That the reputation of a lifetime should not be blasted by a charge of criminality, made before officers whose general practice is to hear but to commit, and who seek not to make the discrimination which should always be made by a judicial officer when the character of a citizen is at issue. Such charges should be made only after thorough investigation, and sustained only after a patient hearing of testimony which should establish beyond peradventure the *prima facie* case which is required. The proper weight can be given to evidence in support of these charges much better by those who are familiar with its rules than by those who are not. This, I think, is a self-evident proposition.

Now, Mr. President, I do not believe that if we strike out this portion of the section we shall accomplish the desired result. It will be almost as easy for a large majority of the men who now occupy these positions to get a nomination upon a general ticket as it is for them to obtain them now, because we all know how easy it is for six or seven men whose interests are similar and whose ambitions are the same, who are candidates before a large convention, to combine and to say to each other, "if you will influence your delegates in my favor I will influence mine in yours," and the result will be that a class of men whose education and training will be but little better if any than those who are now inflicted upon us will be likely nominated in the future. Let me say, Mr. President, that when gentlemen get up and advocate the amendment of the distinguished delegate from the city they close their ears to the appeals of every association in the city which has for its object and purpose *reform*. They ignore with contempt the appeals of the Municipal Reform Association which have been laid upon our desks day after day calling attention to these facts. I beg gentlemen not to strike out what was in committee of the whole considered a very beneficial portion of the section.

MR. ARMSTRONG. This is a question which involves the interests of Philadelphia peculiarly, and as the section was drawn by Mr. Cuyler, who is not now present, and we shall lose but two minutes of our morning session by postponing it, I think it but an act of courtesy that he should be allowed to be heard in advo-

cacy of his section. I desire to say that I do not concur with him in this provision which requires these judges to be learned in the law; but in view of the manifest propriety of allowing the mover of the section to be heard upon it, I move that we now take our recess.

Mr. TEMPLE. I should like to know whether we are to be detained here hours and hours in waiting for Mr. Cuyler. I do not feel like doing it.

LEAVES OF ABSENCE.

Mr. REYNOLDS. Before the motion for a recess is put, I ask leave of absence for Mr. Henry G. Smith for to-day.

Leave was granted.

Mr. HANNA asked and obtained leave of absence for Mr. Wherry for a few days from to-day.

Mr. STANTON asked and obtained leave of absence for Mr. Addicks on account of sickness.

The PRESIDENT *pro tem.* The hour of one o'clock having arrived, the Convention will take a recess until half-past three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

THE JUDICIAL SYSTEM.

The PRESIDENT *pro tem.* The Convention resumes the consideration of the twelfth section of the article on the judiciary. When the Convention took its recess the pending question was on the amendment of the gentleman from the city, (Mr. Dallas,) which was to strike out all after the word "judges" in the seventeenth line, to and including the word "their" in the nineteenth line, and insert the word "whose," so as to make the clause read:

"Such court shall be held by judges whose term of office shall be seven years," &c.

Mr. HANNA. Mr. President: In my judgment this section is improperly proposed to be inserted in the Constitution of the Commonwealth. It has no place there whatever, in my judgment. We are called upon to form a Constitution for the Commonwealth of Pennsylvania, but if we adopt this and other like suggestions it may be termed a Constitution of the Commonwealth of Pennsylvania and for the city of Philadelphia. That is what it will amount to.

Now, I do not propose to cure the evils which exist at present by any such dose

of physic as this. I submit that if there are evils in the present aldermanic system in the city of Philadelphia, the proper remedy lies within the power and control of the people of Philadelphia. That is where it belongs, and we are not by experimenting with the body politic to cure this so-called disease and remove these evils.

I am willing to admit that many of the causes of complaint against the present system are true; that they ought to be remedied; that they ought to be prevented; but I submit that we have a remedy. The people have a law which they can invoke, and from time to time such officials as these who have acted contrary to law, who are guilty of extortion, who are guilty of misdemeanor in office in any way or shape, can be punished and they have been punished. As one of my colleagues said this morning, two of the so-called magistrates have recently been convicted for misdemeanor in office and punished. That is the proper way to do.

We have heard much about uniformity and symmetry in our Constitution. Now, if we engraft upon it these excrescences, where is your symmetry and where is your uniformity? I contend that this is no place whatever for anything of this kind; but if the Convention think it proper that the city of Philadelphia should be governed in its internal affairs, in the details of the administration of its justice, differently from other counties in the State, of course I shall submit with all the grace I can and try to mould the plan which the Convention may have in view to such as will suit our wants and necessities.

As far as regards the amendment offered by my colleague, (Mr. Dallas,) I agree with that. If we are to have a system of courts not of record, then we do not want judges learned in the law. If they were to be minor courts, if they were to be courts of record with proper jurisdiction, then I would say let us have judges learned in the law; but if not, if they are to be merely aldermen with the present jurisdiction, amounting only to one hundred dollars, with the right to issue warrants and hearing all the petty cases that may be brought before them, let us have our present system, but modified to suit our wants and meet the complaints made against it.

My friend from the city, (Mr. Knight,) from his experience in the affairs of our

city, I am sure, will agree with me that we have plenty of gentlemen in our city, retired merchants, those we had in former years, who occupied the position of alderman with honor to themselves and with entire satisfaction to the community. Such men as these we have now, and such men as these we can get; but we do not want to institute a sort of trivial court to be presided over by some member of the bar.

According to this section, with one of these courts for thirty thousand of our population, taking our population of 700,000, it would give us twenty-three of these minor courts. The judges are to receive fixed salaries; and if we are to pay good salaries for good men, we shall impose quite a serious burden upon the tax-payers of the city of Philadelphia. Now, in regard to the number, I would much rather see the present number of the magistrates of the city reduced. Reduce the number and give them fixed salaries, but do not impose on us a series of petty courts to be presided over by members of the bar.

As my friend (Mr. Knight) well reminded us, the "poor we have always with us" in this respect, and they will be the ones who will have charge of these courts. No, sir, let us have the present system, but remove its evils, and that we can do and answer all complaints made against it by paying the magistrates fixed salaries, and providing that all the fees and costs shall be paid into the city treasury.

What is the complaint now? The complaint is that the present aldermen, with their officials, provoke litigation. I think that perhaps, to some extent, is true; but if we give them fixed salaries, such as they can live upon and be satisfied with, then they can afford to be independent men; instead of provoking litigation they would discourage it; and instead of having hundreds and thousands of petty returns made to our quarter sessions from year to year, I believe that if we adopt the simple plan of reducing the number and giving them fixed salaries the cases returned will be reduced perhaps fifty per cent. It will be a saving to the city, diminish the business of our quarter sessions, and work to the entire satisfaction of the community.

That is a simple plan, a practical plan; but if we are to have courts presided over by gentlemen of the bar we must have all the incidents of a court. Each court

must have its clerk; each must have its officers, so-called, tipstaves; each must have its court room fitted up at the expense of the city, and their officers, and all other incidental expenses, paid by the city; and as a taxpayer of the city I am not willing to give my vote or any influence I may possess towards any system which will add a burden upon the tax-payers and vastly increase the expenses of the city.

Now, I do submit, Mr. President, that without seeking to make too great a change in our present system, we should be satisfied with what we have got and can readily secure. We need justices of the peace in the city just as much as you need justices of the peace throughout the interior. We need men known to their neighbors, known to the people of the localities in which they have their offices, and in their wards and their districts, and let us have that class of men paid by the city, and I am sure that the administration of justice in this respect will meet with the entire satisfaction of the community.

I do trust, sir, that the amendment of my colleague (Mr. Dallas) will be adopted.

MR. CUYLER. Even if the proposed change involved all that the gentleman from the city (Mr. Hanna) has just said, it would be a wise economy in the city of Philadelphia. Even if it involved the necessity of providing court rooms and all the machinery of courts, in the dollar and cents point of view it would be a large saving to the city; by which I mean simply to say that no effort upon the part of the authorities of this city has ever been able to compel an honest return from the magistracy of this city to the treasury of the city. I mean to say that the money that is withheld from the treasury of the city by the petty magistracy of the city would more than cover all the expenses to which the gentleman alludes, even if he were correct in supposing that it was necessary to incur such expenses; but it is not necessary to incur them. There is no more need that the city should provide court rooms for the magistrates contemplated by this section than there was that it should have provided them in times past for the aldermen, or that it might find it necessary in the future to provide them for the aldermen, supposing the old system to be continued.

But, Mr. President, the honest truth is that the very name of aldermen has come to be in Philadelphia almost a disgrace. There are a few men of character—a very few—among them; men of integrity and well-deserved and well-earned reputation; but that remark is not true of the mass of the aldermen; and since the Legislature has placed upon those aldermen political duties and given them the control of the registry, the frauds that have been practiced in the exercise of that power has made the whole body so odious that they are a stench in the nostrils of the citizens of Philadelphia to-day.

Now, this section provides for no material change from that which has existed before, save that, first, those who are to exercise the office will receive fixed salaries instead of being paid by fees and by a control over the penalties that are paid in for violations of city ordinances or of acts of Assembly; and, second, in that a class of men learned in the law will discharge the duties that have been heretofore discharged by the aldermen. Why should not this be the case? Their duties are judicial. They ascertain and decide questions which involve the legal rights of the parties brought before them. Can it be an objection that they are to be learned in the law? Can there be an argument made that men who are to decide legal questions, and oftentimes to decide them finally, shall be men who are accomplished in the art that they practice? I cannot conceive of any well-founded objection that could be urged under such circumstances.

As it is now, the decision of an alderman upon a question in civil practice that is brought before him amounts to nothing except simply to increase costs. Who ever heard of a case of late years before an alderman in the city of Philadelphia that was not appealed from him to the court of common pleas? Where, then, was the advantage in the action of the alderman? What benefit has been derived either to the suitor or to the public by reason of the existing system? The expense of the hearing before the alderman is incurred, and uniformly the case is appealed, and then comes up saddled with these additional expenses to be paid by the suitors at last. Why is this? Simply because our aldermen are not competent for the duty they discharge. If our aldermen were men of weight, of character and of learning in the law, the people would abide by their decisions; appeals

would become rare; they would more often, far, than they do now, finally dispose of questions that come before them. It is therefore to get rid of that difficulty; it is to discourage appeals by providing honest and competent men to decide the cases in the court below, thus relieving the humble suitor who seeks the court of the alderman from the oppression which the costs and expenses of that court constantly involve—it is for that, largely, that this section is devised.

That is my reason for thinking it would not be well to strike from it the words "learned in the law." I think they ought to be lawyers; that there is just the same argument in favor of requiring the petty magistracy to be learned in the law that there is in requiring the superior magistracy to be learned in the law, and in some respects even more important, because the suitors in their courts are in a very large degree people of humble means, to whom costs are a serious consideration; and the fact that they can secure an honest and competent judgment upon the questions that they bring before these magistrates, and thus put an end to the controversy raised, will save them from the costs that constantly roll up if the case is appealed, and save them from the delay which that appeal necessarily involves.

I scarcely supposed, sir, that it was necessary in the city of Philadelphia to urge a reason why the existing petty magistracy of our city should be abolished, and I am most of all astonished that a gentleman like my friend who last addressed this Convention, who must know, from the necessities of his position as a member of the councils of this city, how necessary this change is, should be found upon this floor advocating the continuance of the old system. Its ills have been so severe that they have demanded the constant attention of the press of our city and of our citizens at large, calling for this very reform which this section proposes. I might refer to the action of the press upon this very section. There is hardly a journal in the city of Philadelphia that has not taken occasion to commend the wisdom of it and to advocate its final adoption by this Convention. So far as I am aware there is not a single newspaper in the city of Philadelphia that has urged the continuance of the old system or advocated any such view as that which my colleague from Philadelphia has just now expressed.

I hope, therefore, that the Convention will not recede from the action which was taken in committee of the whole, and that the section just as written will be adopted.

Mr. HANNA. I should like to ask my colleague one question before he closes, whether nearly all the complaints made against the aldermen of the city of Philadelphia do not originate from the fact that under the registry law they have the right to appoint the election officers?

Mr. CUYLER. No, sir; that has been an aggravation of the ills of our people, but offences quite as serious and quite as numerous were perpetrated on the part of that body before the registry law was passed. The outcry has been persistent and continued for years in our city.

Mr. BIDDLE. Mr. President: There is undoubtedly in this section a great deal that must commend itself to the intelligent action and, I hope, adoption of this Convention. The change by which these officers are salaried, instead of being, as now, the recipients of fees and thereby incited to foment petty litigation, is a most admirable one. So the mode of their selection, by which a choice is given to the people of the city at large to take out from among their midst officers qualified to act in this department, is, in my judgment, a good one. So, perhaps, although I have more doubt in regard to this point, their longer tenure of office. So far I am in entire accord with the section as it now stands, and, were there nothing else in it, I should waive any difference of opinion on minor points and vote for it. But there is one part of it which cannot receive my assent. Undoubtedly it is very desirable to have these men learned in the law, as this section somewhat ostentatiously announces; but would they be learned in the law by being selected exclusively from the ranks of the bar? I was reminded when I read these words in the section of what Lord Brougham once said on the floor of the House of Lords. He was referring to two dukes, one a royal duke and the other the Duke of Wellington, and he characterized them somewhat thus: "One noble duke illustrious by his great actions, and another noble duke illustrious by the courtesy of this House!" I think these magistrates would be learned in the law by the courtesy of this House, or of this section as it stands. It would be either a hospital and house of refuge for broken down men who could find no rest for the soles of their feet else-

where, or be a school for unfledged lawyers. I prefer infinitely to take from the body of the people to settle petty disputes which have no intricacy, which require nothing for their solution but a sound, clear head and an honest heart, men who are commonly called business men. I am satisfied that they would be the class from which these aldermen or justices of the peace should be drawn. I would not exclude a man who had been educated in the profession of the law, because that would be unwise. He might undoubtedly be ranked in the category I have endeavored to describe; but to tell the body of the petty suitors of the city, which this section does in effect tell them, that a man must have at least turned over for four or five years the pages of Blackstone, I never can endorse. I do not believe that in that way you would get the class of men who ought to be the arbitrators and mediators between the suitors who would come into these courts. I believe a little knowledge would rather induce the men so selected to take pleasure rather in the quilllets and the quillips of the law than in the real merits of the case. I believe substance would be sacrificed to form. I know, and every Philadelphian knows, that we have had in our midst heretofore a class of men who discharged those functions, who were not technically learned in the law but who yet administered the law as applicable to the disputes in their forms with great advantage to the suitors and with credit to themselves. The names of many of them were enumerated here when the debate occurred a couple of months ago, and it is not worth while to go over them now. Some of them I believe yet remain to-day to do honor to their positions.

I am for allowing just such men as we had thirty or forty years ago to continue to settle these disputes. My colleague from Philadelphia who spoke last has detailed, undoubtedly with a great deal of truth, the defects of the present system. But they have been defects engendered by other influences than the want of acquaintance with the technical rudiments of the law. They have been engendered by the system of fees. They have been engendered by casting upon the shoulders of these men political duties. They have been engendered, to a very great extent, by the operation of the registry law which has turned into a red hot politician every magistrate in this county. They have not, in my opinion, been engendered by

the want of the title of attorney-at-law after the name of these men.

Why, sir, what is the kind of disputes which come before these magistrates? They are generally questions of *meum and tuum*. Nine of the cases out of every ten that come under the jurisdiction of these magistrates are whether a petty debt is owed or not, whether a debt is owed upon a book account, or whether a debt is owed upon a due-bill, or something of that kind; I say it with all respect to my colleague, (Mr. Cuyler,) who I know is earnest in this matter, and whose earnestness has great weight in my eyes, that it would not be wise to introduce the technical rules of actions to apply to this class of cases. Of course it is said that it is not proposed to do that, but what is the use of having a man before whom to commence an action on a promissory note who knows that the action is to be commenced by a writ in an action in the case sounding in tort, when all that it is necessary to know is—"did the man make the note? Is this his signature? Did he order the bill of goods? Was the service rendered to him? Is his identity established?" These are the usual questions which these magistrates are called upon to decide, and I submit that it would be a great deal wiser to allow them to be settled by the dictates of plain common sense than to run into anything like a technical system. These men styled "learned in the law" would think it necessary to earn the title which this Convention confers upon them. You would have the most technical refinement introduced where really nothing is necessary but the common judgment of a common ordinary man.

While, therefore, I am willing to retain in the section that which is valuable, I am not willing to give a place in it to that which I am satisfied not only entirely disfigures it, but which would be most unacceptable to the people. I believe, and it certainly is an argument entitled to some consideration, although it is not an argument which should be an over-ruling one in the consideration of any one of these questions, that by introducing such a section as this you would array a very large body of the people against the adoption of the Constitution. You would certainly array every man who has aspirations to this office who has not the qualifications which the section now requires. You would array a very large class of people who think it unnecessary to have these disputes settled by men who are

technical lawyers. It would be considered an attempt on the part of this Convention, the composition of which is, to the extent of four to five, made up of lawyers, to create for themselves a class of petty offices, and while this would undoubtedly be an unjust charge, still it would have its weight in the community.

I hope for these reasons, which all have more or less value in this question, that the amendment of the gentleman from the city (Mr. Dallas) will be adopted.

MR. BOYD. Will the gentleman answer me one question?

MR. BIDDLE. If I am able.

MR. BOYD. Suppose these men should receive a salary, say of \$5,000, would that not secure a different class of men from what he supposes, and would not this salary be economy on the part of the city if paid to introduce a different system?

MR. BIDDLE. I think it would be a most extravagant salary, and so far from being economy would be a waste of public money. I should divide it by ten.

MR. TEMPLE. MR. President: I should not undertake to detain the Convention but for the fact that when this question was brought up this morning it was generally understood that we would take a vote upon this section before the hour of recess; but inasmuch as the author of this section was not within the Hall, it was agreed that the matter should go over until the afternoon. Just prior to the adjournment of the morning session the delegate from Philadelphia who sits on my left (Mr. J. R. Read) undertook to defend this section, and I desire to call the attention of this Convention very briefly to a few reasons urged by that delegate in support of this section and in opposition to the amendment.

The learned delegate undertook to say that the present aldermanic system of Philadelphia had become infamous, and he quoted the Reform Association of this city to show that the aldermanic system in the city and county of Philadelphia was a nuisance and an abomination.

Now, Mr. President, I am not here for the purpose of justifying the aldermanic system as it has heretofore existed. I believe with the delegate who spoke last that there are certain reforms needed in that branch of our judiciary, but I believe, more than that, if the amendment as offered by Mr. Dallas, accompanied with the amendment just offered by myself, should be adopted by this Convention, that all these evils can be cured.

Now, if the argument of the gentleman from Philadelphia (Mr. J. R. Read) be true, that because the Reform Association of Philadelphia has condemned the aldermanic system, that that is a reason for this Convention abolishing altogether the office of alderman, I beg leave to call the attention of this Convention to the fact that if we are to heed such admonitions as this, we would abolish almost every department of the city government. The Reform Association, I care not whether truthfully or not, has framed almost the same bill of indictment against the Legislature of Pennsylvania, against the criminal court of Philadelphia and against a portion of the judiciary of the city of Philadelphia, and also particularly against the grand jury system of the city and county of Philadelphia. I beg leave to call the attention of the delegates upon this floor that such an argument as this, if applicable to the office of alderman in the city of Philadelphia, should apply and would apply with equal force to every branch of the city government.

But, Mr. President, how does the distinguished delegate undertake to improve on this? Because I will leave that branch of the subject, believing that this Convention is not going to strike down this branch of our judiciary, simply because it has become, as the gentleman says, a nuisance and a thing desirable to get rid of. Why, sir, what were the assertions of the delegate from Philadelphia when the question of the construction of the Legislature was before this House? Look, if you please, at gentlemen who represent us in the Legislature. The delegate who took his seat and last spoke upon the opposite side of this question knows very well that if the Legislature of Pennsylvania was pruned of the sores that now exist in it from the city and county of Philadelphia there would be left but very few to tell the tale of legislation. It is no more a proverbial fact, as stated by my friend from Philadelphia, (Mr. Read,) that the aldermanic system in the city and county of Philadelphia is an abomination and a nuisance, than that the legislators from the city of Philadelphia stand in the same category. Why, the delegate told us this morning that two aldermen of the city and county of Philadelphia had been convicted for misdemeanors in office. I could have told him that another profession in the city and county of Philadelphia who are

equally officers of a higher court than this, have now in the county prison of this county more in number than the number referred to by the delegate. Does he forget that there have been more than two lawyers in Moyamensing prison convicted for higher offences than these. Aye, and more than that, does he not know that when these lawyers have been convicted for felonies, and when they have served their terms out, they come back honored and respected in every court in the city and county of Philadelphia? Is not that a truth? I call upon the delegate to state candidly and fairly to the delegates from the interior of this State whether or not certain members of the bar of the city of Philadelphia who are officers of the court and a higher court have not been convicted and in jail, and when they have served their time out have come back honored and respected as members of the bar; but we did not urge that as a reason why the profession of the law should be abolished. But following this thing further up—

Mr. HANNA. Will my friend allow me to correct him? They are not honored and respected.

Mr. TEMPLE. They are not interrupted in the enjoyment of their practice as lawyers.

Mr. HANNA. They are permitted to practice. That is what he means.

Mr. TEMPLE. I do not desire to be interrupted.

Again, Mr. President, is this a reason to abolish the office of alderman in the city and county of Philadelphia? If so, why not strike out that branch of our city government known as the common council, some of whose members we have upon this floor, the most honored and respected, but because some of their number have fallen from grace, one of them now serving out a term in the penitentiary, is that any reason to abolish the position of common councilman?

I beg leave to call upon the delegates on this floor to pause before they abolish this office for any such reason.

I submit, as I have stated before on this floor, that to make it incumbent upon a man who enjoys this office to be a lawyer will be the merest figment in the world in the imagination and a positive error. Talk to me about any honorable lawyer, any man who has the honor and the respect of his profession at heart, accepting the office of alderman under this section, which gives him jurisdiction to the extent

of one hundred dollars without any of the ordinary equipments of a court. His court is not one of record, and therefore it can never have jurisdiction except to a limited amount. Why it seems to me that that prejudice which has existed against the aldermanic system growing out of things which have been spoken of by other delegates ought not to lead us astray in this matter.

I conclude by saying, first, that the argument of the distinguished delegate from Philadelphia (Mr. J. R. Read) has no weight at all with the delegates in this Convention, because of the invidious comparison that he made between these men and other branches of government. The argument of the other distinguished delegate who has spoken on the opposite side of this question should have no weight with the delegates here, because he does not offer us anything that is better. I submit that although I am in favor of this section if it be amended as suggested, I would sooner a thousand, aye, ten thousand times, have the old system than I would have certain courts which have been already christened and named by the distinguished delegate from Washington as pea-nut courts, established in the city and county of Philadelphia, which would be worse than the Tombs courts in New York, a thousand times over.

I trust that the delegates upon this floor will put their seal of condemnation upon such action as this by supporting and adopting this amendment.

Mr. ARMSTRONG. I am in very strong sympathy with the purpose to be attained by this section. It is unnecessary to review the question in detail; but I will venture to remind the Convention that not only the Reform Association, but the Prison Association and the papers of the city, and in fact all who have given unbiased and unprejudiced consideration to this question, are of opinion that there is great necessity for a change in the aldermanic system in this city. I do not think it wise to limit the selection of these officers to persons who are learned in the law, and I shall therefore vote to strike out that part of the section. I think "a little learning is a dangerous thing," especially at the bar, and that lawyers who would take positions of this kind are not the persons to give dignity to the position or to give a wise administration to the law within it. The purpose of this kind of magistracy is more analogous to voluntary arbitration, in which the arbitrators

are sworn justly and equitably to try the case. Questions of law do not arise before this kind of magistracy. They are questions to be determined upon a fair consideration of facts. To leave the section as it now stands would ensure hostility from sources which the Constitution ought not to encounter. With the section amended so as to leave the choice of magistracy to the citizens at large, I regard it as one of exceeding great value. I hope, therefore, that the amendment will be adopted, and that thus amended the section will be agreed to.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia, (Mr. Temple,) to strike out the word "judges," in the seventeenth and twenty-first lines, and insert the word "magistrates."

Mr. ARMSTRONG. That is not of so much consequence. I understood it to be on the amendment to strike out from the sixteenth to the nineteenth line.

Mr. TEMPLE. I will withdraw the amendment for the present.

Mr. KNIGHT. I agree quite fully with the gentleman from Lycoming, that under the section as it stands we shall be likely to have a very inferior class of magistrates. Philadelphia lawyers have been held in very high estimation for the past century. In my judgment the bar of no city or State has had a reputation equal to that of the bar of Philadelphia. Now, I think it is rather degrading that they should come down to exclusively occupy this position.

Further than that, I think the adoption of this section as it stands would have a very bad influence upon the adoption of the Constitution. We have a population of over 700,000 persons in the city of Philadelphia to-day, and probably not over 7,000 lawyers. That being the case, there would be just one per cent. of the population lawyers. We have now a great many aldermen of experience and of good judgment, and who are well thought of, and they would all be ruled out in the selection of these magistrates; and if we determine that the selection of these officers shall be made from one per cent. of the community alone, I think it will produce a prejudice against the actions of the Convention that will tell very materially when we want the votes of the people to confirm our work.

There is another fact which has been alluded to by my colleague from Philadelphia, (Mr. Biddle,) that in this Con-

vention there are over one hundred lawyers. Now, it would be said, and to my mind it looks very much like it, that they were simply desiring to perpetuate their own profession when they, constituting a majority of over three-fourths of the members of the Convention, say that in the selection of twenty-five of these officers no man shall be competent to fill the position unless he be one of their profession.

The PRESIDENT *pro tem*. The gentleman does not mean to say that there are one hundred lawyers here to-day. [Laughter.]

Mr. KNIGHT. No, sir. I mean to say that there should be one hundred lawyers here to-day.

For these and other reasons I hope the amendment will be carried.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Dallas.)

The amendment was agreed to.

Mr. TEMPLE. In order to ascertain the sense of the Convention upon the amendment which I offered a few moments ago I now renew it; that is, to strike out the word "judges," in the seventeenth and twenty-first lines, and insert "magistrates," so as to read: "Such courts shall be held by magistrates whose term of office shall be seven years," &c.

The amendment was agreed to.

Mr. HANNA. I move an amendment in the nineteenth line, to strike out the word "seven" and insert "five," so as to make the term five years instead of seven.

Mr. MACVEAGH. That agrees with the preceding section.

The amendment was agreed to.

Mr. ARMSTRONG. I move to amend by striking out in the sixteenth line the words "for each 30,000 inhabitants" and inserting the same words after "Philadelphia," in the thirteenth line. It is not grammatically expressed as it is now.

Mr. BIDDLE. That is a mere transposition.

Mr. ARMSTRONG. Yes, sir.

The amendment was agreed to.

Mr. DARLINGTON. I move to amend in the twenty-first and twenty-second lines by striking out all after the word "city" down to and including the word "chosen."

Mr. BIDDLE. Will the gentleman be kind enough to give us the import of the amendment?

The PRESIDENT *pro tem*. It is moved to amend by striking out in the twenty-first and twenty-second lines 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."

Mr. DARLINGTON. Mr. President: Like the gentleman from York (Mr. J. S. Black) upon another occasion, I want upon every occasion, when this question is presented, to record my vote against this "clumsy and rude contrivance" of the minority system. I desire the yeas and nays upon this question if gentlemen will oblige me; otherwise I shall address myself to the Convention for about ten minutes.

The PRESIDENT *pro tem*. The delegate from Chester asks for the yeas and nays on his amendment.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. BROOMALL. I do not intend to occupy the time of the House on this question, but I desire to call the attention of the Convention to the fact that under this section it will very frequently happen that but a single one of these magistrates is to be elected, and I should like to know how you would put in force, then, the clause that requires each voter not to vote for more than two-thirds of the number to be elected?

Mr. MACVEAGH. My objection to this clause is that, instead of being, as it seems to me, in the direction of any reform in this matter, it is virtually remitting these *quasi* judicial appointments exclusively to nominating conventions of the different political parties. It may be that the same thing is done now, as gentlemen remind me; but now certainly in a district the good men of the district might combine and hope to defeat anybody who was running and elect his opponent. The moment you put this limited vote in operation in this matter you give over the entire control of every alderman's office in this city to the political parties. We have heard a good deal of talk about "rings" in this Convention and combinations for corrupt purposes. I venture to prophesy now that after this is adopted, and you have offered to the political managers of this city an absolute control of these aldermanic positions, there will be a combination made—perhaps there exists one now but there will be certainly one then—that will utterly paralyze any effort of the Reform Association

or of any reform body to interfere with the nominations made by the political conventions.

Mr. LITTLETON. I desire to call attention to the fact that if these words are stricken out the probability will be that if the section should be adopted and the Constitution adopted, one party will be able to elect all the aldermen. I say, therefore—

Mr. MACVEAGH. Not at all. That could be remedied by making them live in districts.

Mr. LITTLETON. That is just exactly the point to which I am coming. Therefore if these words are stricken out you must do away with the election by general ticket. No one would contend here that it would be right or proper that all these minor magistrates in a large city like this should belong at any one time to any one political party; and this provision was inserted so that the minority party as at present existing would get about its fair share, taking into consideration the present number of the members of the two parties.

Mr. MACVEAGH. If they are not made to live in districts there will be portions of the city that will not have any aldermen at all. Are not the aldermen to be distributed? Is not that the object?

Mr. LITTLETON. If the gentleman will permit me, the system of electing them by general ticket was advocated here and deliberately adopted, because it was thought that better men would thereby be secured. A man can control a petty district who never could possibly be elected by the city at large.

Mr. MACVEAGH. Then they are all to live around the court house row!

Mr. LITTLETON. That is a matter for the Legislature, I suppose.

Mr. MACVEAGH. If elected on general ticket, how can they be regulated by the Legislature?

Mr. LITTLETON. I trust these words will not be stricken out if the other portion is retained as at present.

Mr. CORBETT. I call the attention of the friends of this section to its phraseology. It appears to me, if printed correctly, as reported by the committee of the whole, that it only creates one court to be held by all these magistrates or judges. It says "one court not of record," and that "such court shall be held by judges learned in the law." Why use the plural? It may have been altered. There may be a different print

from what I have. I call for the reading of it from the desk.

The PRESIDENT *pro tem*. It will be read from the thirteenth line down.

The CLERK read as follows:

"In the city of Philadelphia, for each thirty thousand inhabitants, 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. Such court shall be held by magistrates whose term of office shall be five years, and they shall be elected on general ticket by the qualified voters of such city; and in the election of said magistrates 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."

Mr. ARMSTRONG. Strike out the word "one" and make the word "court," in line fifteen, plural, and it obviates the difficulty.

Mr. LITTLETON. There is no difficulty in the construction of this. It means that for each thirty thousand inhabitants there shall be a court. Of course, the Legislature will have to arrange the districts, and the rest of the section simply means that these different judges or magistrates shall be elected by the community at large. Of course, the judge will have to reside in his district. That will be matter of legislation. Or his district may be fixed by law, and his office will have to be in his district. There is no sort of difficulty about it.

Mr. BUCKALEW. I understood that these details were agreed to by the members from the city. Of course, in making so radical a change in regard to the local magistracy it is necessary, in order to make the amendment acceptable, that something of this kind should be inserted. Otherwise we have twenty-two magistrates, all elected on one ticket by one party. As to the remark which was made by the gentleman from Dauphin (Mr. MacVeagh) on the subject, I think we have heard that objection before. At present the majority would elect fourteen of these magistrates and the minority eight. The result would be that there would be a competition between the two tickets as to six members of this board,

the difference between eight and fourteen; and if either party were unfortunate in nominating a few bad men, there would be an opportunity to cut them freely, just as much as at any other election, to the extent of six of those to be chosen.

As to the other point, the gentleman from the city over the way (Mr. Littleton) has explained that by legislation provision will be made for assigning these magistrates to different localities in the city. I suppose the most convenient mode would be to have them meet and consult together, if they could agree, as to the assignment of their respective districts to suit their convenience, and in case of their disagreement the assignment should be made by the court of common pleas of the city, or some provision of that sort, but it is not well here to go into details on that subject.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on the amendment offered by the delegate from Chester (Mr. Darlington.)

The yeas and nays being taken, were as follow, viz:

Y E A S .

Messrs. Bowman, Broomall, Calvin, Curry, Darlington, Edwards, Ewing, Gilpin, Hanna, Hay, Knight, Lawrence, MacConnell, MacVeagh, Minor, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Samuel A., Reynolds, Rooke, Ross, Smith, Henry W., Stanton, Struthers, Walker and Wetherill, J. M. —28.

N A Y S .

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Black, Charles A., Black, J. S., Boyd, Brodhead, Brown, Buckalew, Bullitt, Campbell, Carter, Church, Cochran, Corson, Cronmiller, DeFrance, Elliott, Fulton, Funck, Gibson, Green, Guthrie, Hunsicker, Kaine, Landis, Lilly, Littleton, M'Clellan, Mann, Mitchell, Mott, Palmer, G. W., Patton, Purman, Read, John R., Reed, Andrew, Sharpe, Simpson, Temple, Van Reed, Wetherill, Jno. Price, Worrell and Wright—49.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardesley, Bartholomew, Beebe, Bigler, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning,

Ellis, Fell, Finney, Hall, Harvey, Hazard, Hemphill, Heverin, Horton, Howard, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Russell, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—56.

Mr. HANNA. I move further to amend, in the twenty-sixth line, by inserting after the preposition "in," the word "civil," so as to read:

"All costs in civil and criminal cases."

The motion was agreed to.

Mr. HANNA. I also move to further amend by striking out, in the twenty-sixth line, the words, "and taxes on the business of such courts;" also to strike out the word "discharged" and insert the word "paid;" and also to strike out the words "only by a direct payment." I think the section would be in a much better shape if it were amended in the way that I have indicated. It would then read: "All costs in civil and criminal cases and all fines and penalties shall be paid into the city treasury."

Mr. ARMSTRONG. It would not do to pay costs on civil cases into the city treasury. They do not belong to the city.

Mr. HANNA. Why not?

Mr. ARMSTRONG. It would be cumbersome and useless; and the city treasurer is not obliged to account for such matters. When such moneys are once paid into the city treasury they cannot come out except by an appropriation.

Mr. MACVEAGH. He means fees.

Mr. CORBETT. I suggest to the gentleman from Philadelphia that he had better strike out "costs" and insert "fees."

Mr. HANNA. I will do that.

Mr. COCHRAN. I do not like a part of this amendment, and for this reason: I do not think it is advisable to strike out the words "such courts." It is to be remembered that this section refers not merely to the city of Philadelphia but to the whole State.

Mr. ARMSTRONG. If the gentleman from York will allow me to interrupt him I will suggest that it is easy to provide for that objection. It was only by an inadvertency that this was made one section. It was intended originally to divide it at the thirteenth line and have two sections. I propose, after the section is finally acted upon in this Convention, to have that division made.

Mr. COCHRAN. If that is to be done I have no objection to the section, because the difficulty I have suggested would not then exist. I, however, think the section would be better if the words "such courts" were not stricken out, and I suggest to the gentleman from Philadelphia that he leave them in.

Mr. EWING. I think it would be better if the section were not amended in the manner indicated, and I should prefer that these words should not be stricken out. As the section stands it will much better prevent the evils intended to be remedied. Costs in both civil and criminal cases will include witnesses fees, fees to parties, and a great many items that are now paid into the magistrate's hands; and one source of corruption has consisted in the fact that the magistrate has taken these fees and costs and appropriated them to his own use. If you still leave him to retain and collect them, you leave open a door to corruption in giving the magistrate a chance of taking fees that he should not take and taking costs that he should not take. Let the magistrate certify the amount of fees and costs, and if there is anything to be paid let it be paid down town, and the city treasurer can take care of it.

Mr. ARMSTRONG. I think it is better to leave the section as it is. One reason why these fines and penalties should only be discharged by payment into the city treasury is to insure the payment there, instead of to the magistrate in whose hands they might remain and never reach the city treasury at all. If the expenses of these magistrates are to be paid by the city, if the magistrates are to receive a fixed salary, there ought to be some means provided which will secure the city the fees that will accrue under the magistrates' system.

Mr. HANNA. To adopt the views of my friend from Lycoming, that the fines and penalties are only to be discharged by payment into the city treasury, would be wholly impracticable. Suppose a man was taken before a magistrate in the north-eastern part of the city and fined for a breach of ordinance, is that man required to be placed in charge of an officer and taken down town to the city treasurer to there pay that fine? Certainly not. He must pay the fine to the magistrate, and under an act of Assembly the magistrate must return, under oath, all his fines and penalties to the city. If he fails to do so, he commits a misdemeanor in

office. This is too simple and plain to need any further argument, and this is what I intended to reach by moving to amend the latter clause of this section.

Mr. J. R. READ. I should like to offer a substitute for the section which I think would obviate all the difficulties which have been urged against it, and at the same time meet the views of my friend from Philadelphia. I will read it for the information of the Convention, and if I am in order I will move it as a substitute for this division of the section:

"All costs in criminal and civil cases and all fines and penalties received by such magistrates shall be paid by them into the city treasury."

That simply applies to this section, and I understand from the chairman of the Committee on the Judiciary that this concluding portion of the section was intended to constitute a separate section, and that he proposes to divide the section into two. Then the substitute that I have read will apply only to the latter part of the section.

The PRESIDENT *pro tem*. The Chair will entertain the substitute of the gentleman from Philadelphia.

Mr. TEMPLE. I moved to amend the amendment, by striking out the word "judges" and inserting the word "magistrates."

Mr. J. R. READ. I rise to a point of order. That is not an amendment to the amendment.

The PRESIDENT *pro tem*. The amendment to the amendment will be received.

The CLERK read the amendment to the amendment, as follows:

"All costs in criminal and civil cases and all fines and penalties received by said magistrates shall be paid by them directly into the city treasury."

Mr. CORBETT. Is it the intention that the costs coming to the witnesses shall be paid into the city treasury?

A DELEGATE. In civil cases.

Mr. CORBETT. Or in criminal either. The word "costs" will cover the compensation to be received by the witnesses. Then you will have to make provision that the city treasury shall pay the costs coming to the witnesses. If you use the word "fees" the result will be different. "Fees" covers the compensation coming to the officer, taxed for his services.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. ARMSTRONG. I have not been able to get the run of this thing sufficiently to know what we are voting upon.

The PRESIDENT *pro tem*. The amendment to the amendment pending is to substitute for the division before the House:

"All costs in criminal and civil cases and all fines and penalties," &c.

Mr. ARMSTRONG. That I think is impracticable. The purpose of this section, as I take it, and that which it ought to accomplish, is simply this—

The PRESIDENT *pro tem*. The Chair will state that he understood the three amendments preceding this were moved by the same delegate, and the three constituted one amendment, and therefore under that understanding he received this substitute as in order as an amendment to the amendment. It is within the rules. Whether the Convention will adopt it or not is for them to say.

Mr. ARMSTRONG. What I desire to say is this: The purpose of the section and all that it intended to accomplish is, first, to take out of the hands of the magistrates the temptation to profit illegally by appropriating fees to which they have no right.

The PRESIDENT *pro tem*. That does not mean costs.

Mr. ARMSTRONG. That does not mean costs. It is not practical, in my judgment, to make the city treasurer a receiver and disbursor of costs which would be due to a very large number of citizens, entailing an amount of book-keeping which it is frightful to contemplate; what we do want is that the fees of the office and fines and penalties shall be paid into the city treasury. Now, whether it be wise to require that they shall only be discharged by direct payment into the city treasury is open to question. There is no objection to providing simply that they shall be paid into the city treasury; and if in the judgment of the Convention that is thought to be sufficient, I will frame an amendment to meet the purpose.

Mr. MACVEAGH. I suggest whether we had better not frame a fee-bill at once for aldermen, and put it in the Constitution and direct what shall be done with the different fees as they are received from time to time. It seems to me that that would be just as much in consonance with the duty of this Convention as it is to prescribe how the fees of this affidavit and the other summons and the entry of the

next action should or should not be paid, in the city of Philadelphia. I cannot believe that it has anything whatever to do with the work of this Convention or that it is anything but the most ordinary species of legislation.

Mr. BUCKALEW. I desire to make a suggestion: That we leave this whole matter of costs and fees alone, and that we have a simple provision, something like the close of the section, that all fines and penalties imposed by these magistrates shall be paid directly into the city treasury, so that they shall not handle them. The city treasurer cannot settle the fees of the thousands and thousands of witnesses.

Mr. MACVEAGH. Will the gentleman allow me to suggest that that cannot possibly work, because take the case of a man who is arrested for fast riding up in the Northern Liberties. The city treasury is not open after three o'clock, as I understand. We might fix in the Constitution the words, "the city treasury shall be kept open;" but you would have to send an officer all the way down, and his costs would be double those of the alderman.

Mr. ARMSTRONG. Now, Mr. President —

The PRESIDENT *pro tem*. There is an amendment to the amendment pending.

Mr. J. R. READ. I withdraw the amendment to the amendment.

Mr. ARMSTRONG. Then I suggest that we put it in this shape: Let the twenty-sixth, twenty-seventh and twenty-eighth lines read as follows:

"All fees and taxes on the business of such courts, and all fines and penalties, shall be paid into the city treasury."

The purpose of that is—

Mr. SIMPSON. We all agree upon that.

Mr. ARMSTRONG. Very well, then, I do not wish to consume time.

Mr. MACVEAGH. Will the delegate make that a little more explicit; "paid by the alderman," does he mean, "or paid by the parties?"

Mr. ARMSTRONG. Paid by the parties.

Mr. MACVEAGH. Then it means nothing whatever.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lycoming to the amendment of the delegate from the city of Philadelphia.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the amendment as amended.

The amendment as amended was agreed to.

The PRESIDENT *pro tem.* The question recurs on this division of the section as amended.

Mr. ARMSTRONG. I inquire of the Chair whether or not we are now to vote on the paragraph commencing at the thirteenth line.

The PRESIDENT *pro tem.* That is the question.

Mr. WORRELL. Before the vote is taken on this question, I should like to call attention to the words in the twenty-third, twenty-fourth and twenty-fifth lines, that "the magistrates in the city of Philadelphia shall exercise such jurisdiction, civil and criminal, except as herein modified, as is now exercised by aldermen and justices of the peace." I should like to ask the chairman of the committee whether, in his opinion, if it is desired at any time to change the jurisdiction of these magistrates, it would be necessary to pass an amendment to the Constitution?

Mr. ARMSTRONG. I should think not. I should think at any time the Legislature could modify and change their powers.

Mr. MANN. I call for a division, the first division to end with the word "fees," in the twenty-fifth line.

The PRESIDENT *pro tem.* The gentleman from Potter asks for a division. The first division ends with the word "fees," in the twenty-fifth line.

Mr. J. PRICE WETHERILL. Although this section has been amended to a considerable extent, and although good to the city of Philadelphia may not be derived from it to that extent that the committee proposed, yet I hope, notwithstanding, the vote will be taken and that this section will prevail. There has been an apprehension, I am satisfied, on the part of a great many who perhaps do not fully understand the bearings of the section, that it is so loaded down with amendments that therefore it ought to be killed, and that hence a majority of the members of this Convention are to vote against it. I hope not. I think I speak for Philadelphia and a majority of her citizens when I say that in this section we prefer half a loaf to no bread; and I do urge, therefore, upon the members of the Convention that if they will not give all the city of Philadelphia may require in the premises, they will give at least the little that is asked for by the section in its present condition.

I appeal, sir, for justice to the poor, the poorer classes that suffer, the poorer classes who must have justice meted to them by the aldermen of the city of Philadelphia; and when I allude to the class of aldermen at present existing, and when I recollect that this section will certainly, to say the least of it, reduce that number one-half, and that thereby perhaps to that extent the poor of the city of Philadelphia will have justice, which they have not had for years. Any one who knows anything about the aldermanic system of the city of Philadelphia will say they have not had justice meted to them. I do hope, sir, that what little good there is in this section will be given to that class seeking justice at the hands of the aldermen. I do hope therefore that the Convention will vote "aye" on this section and give us what little there is left of it.

Mr. ARMSTRONG. There is more in the suggestion of the gentleman from Philadelphia (Mr. Worrell) than struck me at first, and in pursuance of his suggestion I will move to add, at the end of the twenty-fifth line, the words "subject to such changes as may be made by law." This removes any possibility of obscurity on that point.

Mr. EWING. Now I should like to ask the chairman another question that would remove one of the very serious objections in my mind to this section; but suppose, as I believe will inevitably occur from the manner in which these aldermen or magistrates or judges, whatever you see fit to call them, are to be chosen, that they will be selected absolutely by a ring of corrupt politicians composed of two parties in the city, before five years they will be worse than the present aldermen.

Mr. J. PRICE WETHERILL. That cannot be; it is impossible. [Laughter.]

Mr. EWING. Cannot the Legislature or any power then come to the aid of Philadelphia and save it from its friends by taking away the police jurisdiction from these magistrates and putting it in some other power?

Mr. ARMSTRONG. Well, sir, I am neither a prophet nor the son of a prophet, and I cannot decide what will happen five years from this time.

Mr. EWING. I am not asking you to decide what will happen five years hence. I am asking you, will the Legislature have that power under this section?

Mr. ARMSTRONG. No.

Mr. MACCONNELL. I believe some gentlemen have spoken half a dozen

times on this subject, and I desire to call attention to the fact that the rule prohibits them from speaking more than once.

MR. J. R. READ. I trust the amendments offered by the gentleman from Lycoming (Mr. Armstrong) or the gentleman from Philadelphia (Mr. Worrell) will not be adopted. That is the very thing we have been complaining of for the last five years. It is by the extension of the jurisdiction of the aldermen that the evil, if it be an evil, as it is admitted to be by Mr. Temple, has been caused. It is the very thing we do not want. It is the very thing we implore this Convention not to do, to enlarge their jurisdiction or to give the Legislature the power to do it. Fix it as you will; fix it at one hundred dollars or two hundred and fifty dollars; but above all I beg of you not to let them go to the halls of the Legislature year after year, as they have in the past, begging and beseeching the Legislature, by their committees and deputations, to enlarge their jurisdiction. I trust the amendment will not be adopted, and I am quite sure the gentleman from Lycoming, when he reflects upon the evil effects of it, will withdraw it.

MR. WORRELL. The gentleman who has last spoken does not understand this section or the import of it at all. If he will read the section he will see that this is to be a court in the city of Philadelphia for civil causes not exceeding one hundred dollars, and that amount is fixed by the Constitution. The purpose of the amendment offered by the gentleman from Lycoming is to leave the section in such a condition that at some future time the jurisdiction which is at present vested in the aldermen may be withdrawn if the best interests of the people should require it. Now, under this section, if it is adopted, limiting the aldermen to a jurisdiction of one hundred dollars, they cannot make this appeal to the Legislature, and yet that is in the body of the section; but any jurisdiction which they at present exercise can never be taken away by an act of Assembly, because that jurisdiction is vested in them by the Constitution; and to say that during the time this Constitution is to be in operation no change in jurisdiction will be required is to say that which I do not think any one will say after mature reflection. I think the amendment ought to be adopted, and that these aldermen should not exercise a constitutional juris-

diction which would require an amendment of the fundamental law to change.

MR. TEMPLE. I should like to have the amendment read.

THE CLERK. If amended as proposed, the paragraph will read:

"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, subject to such changes as may be made by law."

MR. TEMPLE. I hope delegates will consider well before they vote on this amendment. Certainly it is not intended to clothe the very aldermen or magistrates, as we now call them, which are so much desired by the delegate from Philadelphia, (Mr. J. Price Wetherill,) with political duties. I beg gentlemen who are in favor of reform in this direction to consider before they adopt this amendment. Why, sir, it would not be three years after the adoption of this Constitution, with this provision in it, before this board of aldermen would be clothed with such political powers as would render them more obnoxious than they are under the present system. I desire to vote for this section or some section that will give us a reform; but I shall never cast my vote for the section if this amendment is appended to it. I will vote for any section or any amendment which allows the Legislature to give these aldermen or these magistrates any jurisdiction or any extended jurisdiction other than of a political character. But gentlemen must remember that they cannot tell how the politics of the city of Philadelphia will be ten or fifteen years from now. Things may take a change, and those who are anxious to have this amendment adopted, if it be upon political grounds, and I trust it is not so, may find that it will come home to annoy them. But I am not in favor of the amendment, because I am totally opposed to giving judges, from the highest to the lowest, political power. The very moment you do that you degrade the highest courts in the land, and you put in the hands of such courts as these the means to execute and carry out the most frightful wrongs upon the people of Philadelphia. I cannot believe that the members of this Convention will adopt any such amendment.

MR. ARMSTRONG. I desire to say but a word. The danger to be apprehended in this section is that we consolidate into the

Constitution whatever powers are now exercised by aldermen or justices of the peace in Philadelphia. If so, we render it impossible for the Legislature to deprive them of certain political powers which they now exercise greatly to the disadvantage of the city, and I think, under such legislative restrictions as we have enacted, we may safely invest in them the discretionary power to regulate the jurisdiction and powers of these subordinate magistrates.

The *PRESIDENT pro tem.* The question is on the amendment.

The amendment was agreed to, there being on a division, ayes thirty-seven, noes twenty-one.

The *PRESIDENT pro tem.* The question recurs on the division of the section.

Mr. BUCKALEW. I desire to add an additional word or two. After the word "changes," in the amendment just adopted, I move to insert, "not involving an increase of civil jurisdiction."

I offer this amendment in order to keep this whole question out of the Legislature of whether these magistrates shall have jurisdiction to one hundred dollars, two hundred dollars, three hundred dollars, or five hundred dollars. Let us fix it in the Constitution. If one hundred dollars is not enough, let us make it something else; but with the amendment of the gentleman from Lycoming added, as a matter of course these magistrates will appeal to the Legislature from year to year. I want to end that one way or the other.

Mr. SHARPE. I move to amend the amendment by adding the words "or conferring any political duties."

The amendment to the amendment was agreed to, there being on a division, ayes fifty-one, noes eight.

The *PRESIDENT pro tem.* The question now recurs on the amendment of the delegate from Columbia (Mr. Buckalew) as amended.

The amendment as amended was agreed to.

Mr. DARLINGTON. I move to amend the section in the twenty-third line by inserting after the word "salaries" the words "not exceeding the amount of fees received."

Mr. CUYLER. I hope the gentleman will not press that amendment.

Mr. DARLINGTON. This is precisely in harmony with the provision which we have inserted in the Constitution in relation to county officers, and I suppose is

equally applicable to the aldermen or magistrates of the city, many of whose offices I am told are very valuable, and some perhaps not so very valuable. I presume it is not the desire of anybody to compel the payment by the city treasury of fees to the amount of from \$2,000 to \$5,000, or whatever sum they shall fix, to a magistrate in a rural district who may not be able to receive five dollars in the course of a year. If they prefer to do so, however, very well.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Chester (Mr. Darlington.)

The amendment was rejected.

Mr. ARMSTRONG. I have a further amendment to offer. In the twenty-first line the word "such" before "city" should be "said," and I move that amendment.

The amendment was agreed to.

Mr. CUYLER. I was necessarily absent when the vote was taken on striking out the clause relating to these judges being learned in the law. I respectfully ask leave to record my vote against that amendment.

Mr. BIDDLE. I hope the gentleman will be permitted to so record his vote.

SEVERAL DELEGATES. The yeas and nays were not called.

Mr. CUYLER. If the yeas and nays were not called I have nothing to say.

Mr. MACVEAGH. The statement answers the purpose.

Mr. CUYLER. Of course the statement answers if the yeas and nays were not called.

The *PRESIDENT pro tem.* The question now is on the adoption of this division of the section.

Mr. MACVEAGH AND Mr. D. W. PATTERSON called for the yeas and nays, and they were ordered.

Mr. T. H. B. PATTERSON. I ask to have the division read as it stands.

The CLERK read as follows:

"In the city of Philadelphia for each 30,000 inhabitants 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. Such court shall be held by magistrates whose term of office shall be five years, and they shall be elected on general ticket by all the qualified voters of said city; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number to be chosen. They shall be compensated only

by fixed salaries to be paid by said city, and shall exercise such jurisdiction, except as herein modified, as is now exercised by aldermen and justices of the peace, subject to such changes, not involving an increase of civil jurisdiction or conferring any political duties, as may be made by law."

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Baker, Beebe, Biddle, Black, Charles A., Black, J. S., Bowman, Boyd, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Elliott, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Heverin, Kalne, Knight, Landis, Lilly, Littleton, M'CLean, Mann, Mitchell, Mott, Palmer, G. W., Patton, Purman, Read, John R., Reed, Andrew, Rooke, Ross, Russell, Sharpe, Simpson, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—58.

NAYS.

Messrs. Broomall, Darlington, Edwards, Ewing, Hanna, Lawrence, MacConnell, MacVeagh, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Samuel A., Reynolds, Smith, Henry W., Stanton, Struthers and Walker—17.

So the division was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bailey, (Huntingdon,) Banan, Barclay, Bardsley, Bartholomew, Bigler, Brodhead, Carey, Cassidy, Clark, Collins, Craig, Curtin, Dallas, Davis, Dodd, Dunning, Ellis, Fell, Finney, Hall, Harvey, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Niles, Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—58.

Mr. CUYLER. I ask leave to suggest two amendments which seem to be necessary, and which are merely formal, for which I ask the unanimous consent of the House. They are to insert in the fifteenth line, after the word "causes," the words "with jurisdiction." It reads "and civil causes not exceeding one hundred dollars." It would read better if it was "and civil causes, with jurisdiction not exceeding one hundred dollars." I

ask leave to insert the words "with jurisdiction" after the word "causes."

The PRESIDENT *pro tem*. Will the House give unanimous leave to make the amendment? ["Yes." "Yes."] The Chair hears no objection, and the amendment will be made.

Mr. CUYLER. I have one similar amendment to suggest. In the twenty-second line it will be observed the language is, "shall not vote for more than two-thirds of the number of persons to be chosen." It may very well occur that only one may have to be elected to fill a vacancy or something of that kind, and it would be rather difficult to vote for two-thirds of a man. The amendment I propose to make is to strike out the word "chosen," and insert "elected where more than one are to be chosen." It will then read:

"No voter shall vote for more than two-thirds of the number of persons to be elected where more than one are to be chosen."

I ask unanimous consent to make this amendment.

The PRESIDENT *pro tem*. Unanimous consent is asked to make this amendment. Is consent granted? ["Yes." "Yes."] The Chair hears no objection, and the amendment is made.

The PRESIDENT *pro tem*. The last division of the section is now before the Convention.

Mr. MANN. I hope this division will be omitted. Certainly it is no necessary part of the Constitution. The two divisions of this section which we have adopted are properly portions of the Constitution and indeed necessary for this Convention to act upon; but it seems to me that this question of disposing of the costs of aldermen and justices of the peace does not properly belong to the Constitution, and it is very doubtful whether the meaning of this language will be acceptable if it should be adopted, and it is much wiser, it seems to me, to leave it in such shape that it can be amended if it should prove to work improperly.

It was stated this forenoon in objection to the tenth section of this article, very forcibly as I thought—in fact I think it was the only real objection made to it—that it was something that properly belonged to the Legislature. I ask if the question of regulating appeals where personal liberty is concerned should be left to the Legislature, why should we not

leave this question of costs and fees there also?

The PRESIDENT *pro tem.* The question recurs upon the last division as amended.

Mr. CUYLER. I desire to say that I like the language of the section better than that of the amendment. The section reads:

"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."

Why amend it at all?

The last division of the section as amended was agreed to.

The PRESIDENT *pro tem.* The question is upon the section as amended.

Mr. DARLINGTON. The section has already been adopted by divisions.

The PRESIDENT *pro tem.* Where we have taken a vote on a section by divisions, we have always afterward taken a vote upon it as an entire section.

The section as amended was agreed to.

Mr. ARMSTRONG. I now hope that the Clerk will note what was said about dividing this into two sections, and make the required divisions.

Mr. LILLY. The Committee on Revision and Adjustment can attend to that.

The PRESIDENT *pro tem.* The division will be made in the section before it is reprinted.

Mr. ARMSTRONG. That is satisfactory.

The PRESIDENT *pro tem.* The thirteenth section will be read.

The CLERK read as follows:

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.

The section was agreed to.

The PRESIDENT *pro tem.* The fourteenth section will be read.

The CLERK read as follows:

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.

Mr. KATNE. I move to amend this section by striking out the word "all," in the beginning of the section; then to strike out all after the word "law" in the second line, down to and including the word "court," in the third line; and also to insert after the word "judges" the words, "of the court of common pleas."

This will make the section read: "Judges of the court of common pleas required to be learned in the law 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." We have already provided for the election of the judges of the Supreme Court, and I do not desire to have that provided for twice.

Mr. CORBETT. In the first section of this article we have reserved to the Legislature the right to create additional courts. As long as that provision stands I am opposed to any amendment of this kind, because it allows the Legislature to provide for them to be appointed.

Mr. KATNE. That does not affect the amendment I propose. I simply propose to strike out here that we shall not elect the judges of the Supreme Court, in order that we may not provide for their election twice.

On the question of agreeing to the amendment proposed by Mr. Katne a division was called for, which resulted twenty-three in the affirmative. This not being a majority of a quorum, the amendment was rejected.

The section was agreed to.

The PRESIDENT *pro tem.* The fifteenth section will be read.

The CLERK read as follows:

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.

Mr. BROOMALL. I do not desire to occupy the time of the Convention; I only wish to call for the yeas and nays on this section. I cannot vote for a provision that vests the appointment of judges in the hands of the leaders of the political parties. I would rather have them ap-

pointed by the Governor if they cannot be elected by the people.

Mr. LILLY. It is all humbug to say that judges cannot be elected by the people under this section as well as under the present system of nominations. The gentleman from Allegheny (Mr. Ewing) has just been nominated for judge by a ring of politicians, and that was not done by the operations of this section!

The PRESIDENT *pro tem.* Is the call for the yeas and nays seconded?

Mr. HANNA. I second the call.

The yeas and nays, which had been required by Mr. Broomall and Mr. Hanna, were as follow, viz:

Y E A S.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Black, J. S., Boyd, Brown, Buckalew, Campbell, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Elliott, Fulton, Gibson, Gilpin, Green, Guthrie, Heverin, Kaine, Landis, Lilly, McClean, Mann, Mitchell, Patton, Purman, Read, John R., Sharpe, Van Reed, Wetherill, John Price and Worrel—40.

N A Y S.

Messrs. Baker, Beebe, Biddle, Bowman, Broomall, Calvin, Darlington, Edwards, Ewing, Fell, Funck, Hanna, Lear, Littleton, MacConnell, MacVeagh, Minor, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Simpson, Smith, Henry W., Stanton, Struthers, Walker, Wetherill, J. M. and Wright—34.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Brodhead, Bullitt, Carey, Cassidy, Clark, Collins, Craig, Curtin, Dallas, Davis, Dodd, Dunning, Ellis, Finney, Hall, Harvey, Hay, Hazard, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Lawrence, Long, McCamant, McCulloch, McMurray, Mantor, Metzger, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Temple, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—59.

The PRESIDENT *pro tem.* The sixteenth section will be read.

The CLERK read as follows:

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.

The section was agreed to.

The PRESIDENT *pro tem.* The seventeenth section will be read.

The CLERK read as follows:

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 States.

Mr. ARMSTRONG. I move to amend the section, by striking out the words "except the judges of courts not of record," which are now unnecessary, owing to the manner in which the twelfth section has passed; and before the word "which" inserting the word "and;" also to strike out the word "wholly" before "paid;" and to insert after "shall," where it occurs the second time, the word "not;" and in the same sentence to change "no" into "any" and to strike out "other."

These are mere verbal changes and I think greatly improve the section. The section as I now have proposed to amend it reads as follows:

"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, which shall not be diminished during their continuance in office. They shall not receive any 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."

The amendment was agreed to.

Mr. BAKER. I offer the following amendment: Strike out the words "wholly paid by the State," and also the words "from any other source."

Mr. President, I propose to strike out these words because they are an interpolation, not found in our present Constitution and not called for by any exigency whatever. The retention of these words in the section can have but one result; and that is to cut down the salaries of the judges in Philadelphia, which are already too small in view of their position and the present expenses of living. No other judges in the Commonwealth will be at all affected by such an uncalled for constitutional provision. Why should we place in the organic law a permanent denial of adequate compensation to a portion of the judiciary of Pennsylvania, and that the hardest-worked in the State? I can see no reason for it. If the citizens of Philadelphia are willing and desire to supplement the salaries paid by the State to its judiciary residing in this city, what right has any one not interested to complain or interfere? No one, sir, but a member of the bar of Philadelphia can have any adequate conception of the immense and continuous labors devolved upon the judges of Philadelphia. The city of Philadelphia, justly proud of her judiciary, distinguished as it is for learning, ability and integrity, would like to be left at liberty to compensate it according to her own sound judgment of its great merit and valuable services.

The PRESIDENT *pro tem*. The Chair will inform the delegate from Philadelphia that the word "wholly" has already been stricken out.

Mr. BAKER. I was not aware of that; I found the word in the printed article before me.

Mr. LITTLETON. I did not understand the word "wholly" to be stricken out.

The PRESIDENT *pro tem*. It was stricken out.

Mr. LITTLETON. Not upon the amendment of the gentleman from Lycoming.

The PRESIDENT *pro tem*. It was stricken out upon the amendment of the gentleman from Lycoming.

Mr. LITTLETON. Then I trust that action will be reconsidered. The vote was certainly taken without a proper knowledge of the question. I listened attentively when the gentleman from Lycoming stated his amendment from the floor, and he certainly did not then mention

that he intended to strike out the word "wholly."

Mr. ARMSTRONG. I beg to remind the gentleman that I clearly and distinctly stated that part of the amendment from my seat in this Convention.

Mr. LITTLETON. I beg the gentleman's pardon. I listened with close attention to the gentleman's amendments when he stated them from the floor, and if he had alluded to the word "wholly" I should have objected to that portion of the amendments. It certainly was made at the Clerk's desk, where the amendment was read so hastily that it was not understood.

Mr. CUYLER. I suggest to my colleague that the section is sufficiently efficacious with the word "wholly" stricken out, because, of course, if the judges are paid by the State they are wholly paid by the State.

The PRESIDENT *pro tem*. The Chair must remind gentlemen that that question has been settled, and the pending question is the amendment of the gentleman from Philadelphia (Mr. Baker.)

Mr. SIMPSON. I hope the amendment offered by my colleague will be adopted by the Convention. The object for which the words intended to be voted upon were put in this section, for they are not in the Constitution of 1837-38, was to meet a single case and to prevent its recurrence in the future. That case was this: In the city of Philadelphia the judges were paid by the State a compensation similar to that paid other judges throughout the State; but as there was a very large amount of business accruing from the wants of the city of Philadelphia itself coming before these judges, the Legislature in their wisdom several years ago provided for the payment of \$2,000 per annum from the city treasury to each of the judges of our courts learned in the law. That has been paid to them for several years. It was not put upon the State Treasury, because it was feared that if the Legislature were to give a compensation of \$7,000 per annum to the judges of this city, other judges through the State would require the same amount from the State Treasury; and inasmuch as a large amount of the business of the courts was derived from the city itself, it was thought to be no more than right that a part of the compensation of the judges in Philadelphia should be borne by the city treasury.

Now, the object of the words of this amendment introduced by the Committee on the Judiciary—for it is an amendment to the old Constitution—is to prevent this payment to these judges out of the city treasury, and I hope that the Convention will adopt the amendment of my colleague and strike these words out. If the Legislature in their wisdom see fit to continue this provision, why should we interfere with them? I have never heard a word of complaint in the city of Philadelphia against this payment. It has been paid for years, and nobody has said anything about it, and I hope we shall still be enabled to pay the judges in our city a reasonable compensation for their services.

Mr. CUYLER. Three or four years ago, for the first time, the Legislature provided that the judges of the county of Philadelphia should be paid a compensation of, I think, \$2,000 per annum out of the city treasury. I think the city generally was considerably shocked at the suggestion. I know the city councils hesitated for a year or two before they made any appropriation which would recognize the propriety of any such action, and to me it has always seemed very unreasonable and very unfair. The city or the county of Philadelphia has of course no judicial functions or powers. The distribution into legislative, executive and judicial powers is predicated of the State and not of a county or of a municipality. The judges are not judges of a county, and not judges of a municipality; they are judges under the general law of the whole Commonwealth, judges of the whole State. They are judicial officers of the State and not of the county, and therefore I never could see any reason for paying them out of the county treasury at all. They should stand entirely removed from local influences; they should be dependent upon no municipality, and upon no county, but upon the State at large for their compensation.

This was put upon the specious ground at the time the Legislature thus provided that there were many functions put upon the judges of our local courts that were peculiar to this county, appointments to office, inquiries into the character and suitability of individuals for appointments upon commissions of various sorts, such as boards of guardians of the poor, boards of health, and so on. This new instrument strips them, very properly, of all such power. All those functions, if

this Constitution is adopted, will disappear and will have gone entirely; and the only reason I ever heard assigned for such a provision of law will have passed away.

I trust, therefore, that the amendment will not prevail, and that the section will continue just as it was written, that is to say that the judges shall be paid out of the public treasury of the State, and in no particular out of the treasury of any county or municipality.

Mr. LITTLETON. Mr. President: I had supposed it would hardly be necessary to say anything on this subject, that it had been so thoroughly settled by the Convention that it was proper that these words should be here that no amendment of the sort proposed by the gentleman from Philadelphia (Mr. Baker) would be offered. It does seem to me that in the light of what has taken place these words are very important and should remain just as they are. There is no earthly reason why the city of Philadelphia or the county of Philadelphia should be compelled to support the judicial establishment of the State any more than any other county of the State. Our courts are open to the citizens not only of the Commonwealth but of every other State in the Union; and why should we be asked to assist in supporting the judiciary of the State, a part of the State government itself? I can see no reason why this amendment should be adopted, and every reason why it should be voted down.

Mr. LILLY. Mr. President: It appears to me that this thing should be viewed on common sense principles. It costs a great deal more to live in Philadelphia than it does in the country, and I think the State should not be called upon to pay that difference to enable the city of Philadelphia to get the best talent on her bench. If she finds it in the city or in the State she should be allowed to pay that difference of living between the country and the city. That is the whole question. I hope there is nobody to be punished for putting this other thing in. It has been intimated that somebody has been treading on somebody's toes. Now, if that is the case—I hope it is not true

Mr. LITTLETON. I should like to ask the gentleman where he heard that intimation. I say that it is not true.

Mr. LILLY. I am not on the witness stand at all; but I have heard this intimation from respectable men.

Mr. BIDDLE. I am compelled, Mr. President, to say a word or two about this matter.

I regret exceedingly that the gentleman from Carbon should have imputed such a motive to the gentleman from Philadelphia to my left who introduced originally this modification. He is utterly mistaken in supposing that it is meant to punish any one. It falls on all precisely alike, and I believe the very purest and in my judgment the most correct motives have induced the gentleman from Philadelphia to the left to frame the section as it now stands.

I think it is impossible to answer the arguments put by the gentleman to my right (Mr. Cuyler) in favor of retaining the section as it is. The judiciary of Philadelphia are part of the judiciary of the State, and it is to belittle them to say that they shall be paid out of the private fiscus of this county. I regret as much as any one that the State salary is inadequate for their compensation; I believe it to be so, but I hope it will not continue so; and while I am sorry as I can be that the effect of keeping the section as it is, properly placing them on the same platform with the other judges of the State, will be to cut them down, I shall certainly vote for the section as it is.

Mr. LITTLETON. I desire, before this question is disposed of, to say one more word on the subject. The gentleman from Carbon has made a remark here which seems to be directed towards me. I desire to brand the statement as utterly without foundation, so far as I am concerned.

Mr. LILLY. I desire to explain. I did not direct my remarks toward the gentleman at all. I only said that I hoped there was no such thing. I care little for this matter, but I want it understood that the gentlemen of Philadelphia are responsible for a reduction of the salaries of these judges, if this works a reduction.

Mr. LITTLETON. Then if it is intended by his remarks to make any reference to me, I desire to deny its truth entirely. I have no motive whatever, except what I think to be honest, fair and upright upon this question. I do believe it wrong that the tax-payers of Philadelphia should be compelled to pay an unjust burden, whether it be \$5 or \$50,000; and I am reminded of the fact, as the question is discussed here, that it is not only \$2,000 a year to-day, but it may be \$5,000 next year, as at the last session of the Legisla-

ture an effort was made to increase this compensation out of the funds of the city treasury to the rate of \$5,000 per annum for each judge; so that while it may not be a very large amount now, (amounting to only \$20,000 per annum,) yet next year it may be \$50,000; and if it is not right we should not be compelled to pay it, if it were only fifty cents. I regret as much as anybody to do anything to affect the income or salary of any person now occupying judicial position in Philadelphia. I know all of the judges and respect them, and I am glad to feel that I have their friendship.

Mr. CUYLER. I wish to say a word also, in justice to myself.

The PRESIDENT *pro tem*. The gentleman has spoken.

Mr. CUYLER. But a word of explanation—it will take but a moment—and that is simply on my own behalf, to disclaim any such motive as the gentleman from Carbon imputed. I have never heard any such suggestion. I have warm personal regard and friendship, I believe, to every judge in this county, and would be the last man to vote to reduce, but would gladly vote to increase their salaries, that I know are inadequate; but on this question I stand upon principle, and I think the amendment is wrong in principle.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. H. W. SMITH. I move to amend the section in this way: In the third line strike out the words "at stated times," and in the fifth line strike out the words "not be" and insert "neither be increased nor." It will then read in this way as to fixing the compensation of the judges:

"The judges required to be learned in the law, shall receive for their services an adequate compensation, which shall be fixed by law and paid by the State, which shall neither be increased nor diminished during their continuance in office."

Mr. President, I will not detain the Convention. I have heretofore spoken upon the subject, but I desire to add a few words now.

By reference to the legislation which has been had on the subject of compensating judges, it will be found that prior to 1861 an act of the Legislature was

passed, fixing the compensation of the judges of the Supreme Court and of the other courts; and it was an act passed fixing their compensation agreeably to what was enjoined on the Legislature by the Constitution. It was an adequate compensation at that time. That continued until 1864. Then commenced what I wish now to provide against. In the appropriation bill of 1864 the judges' compensation was increased not a great deal I admit, but a sum was appropriated and it was worded in this way: "Each judge," describing the judges, the supreme judges and the judges of the courts of common pleas and the judges of the district courts, should receive such a compensation in addition to the regular one fixed by law prior to 1864, "for the present year and no longer," according to the phraseology of the law.

The Legislature resort to these words that they shall "at stated times" receive a compensation. That word "times" got a great signification. If the phraseology had been in the old Constitution "shall at stated times receive so much," there might have been a difference. In 1865, when the general appropriation bill was again passed, there was another increase made. Then they said "for the present year." First they said "for the present year and no longer." That did not make the terms quite as strong, thus altering it every year. In one of the appropriation bills they say, during the present year, and they then go on, and in that way they continued the appropriations up to 1872, sometimes making them in the same way for two years and changing them in that way almost every year, with one or two exceptions, until the compensation of some of the judges is doubled and more than doubled, and the others largely increased.

Now, I am in favor of giving the judges a full and ample compensation. But under the present Constitution, with the words "at stated times" reading "at stated times receive an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office," I do not believe, and I never did believe—and I say this as a lawyer—that the framers of the Constitution ever intended that the Legislature should have authority to fix the compensation of the judges and then unfix it annually, or from time to time as they are going on. Whether the Legislature of 1873 have done the same thing I do not know. I

have not had possession of their appropriation bill, and have not read it.

Give the judges an ample compensation, but do not increase it continually, running on, never stopping, for it has not stopped since 1864. Give them an ample compensation. If the salary fixed prior to 1864 was inadequate, let the compensation be made adequate; but do not add year after year and go on increasing compensation, and thus establish a system of plunder which may become intolerable and produce revolution.

Now, strike out those words. Frame it that they shall receive an adequate compensation to be fixed by law, which shall neither be increased nor diminished during their continuance in office. That will avoid this difficulty. Judges should be well paid, I admit, but they must not be over-paid; they must submit like others.

I desire to record my vote upon this, and I ask for the yeas and nays.

The PRESIDENT *pro tem.* Is the call seconded by ten members?

MR. EWING. Perhaps the gentleman will not call the yeas and nays when he hears my suggestion. I wish to call the attention of the gentleman from Berks to section fifteen of the article on legislation, which provides for these and all other officers:

"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 case of all officers.

MR. H. W. SMITH. I am aware of that; but why pass this section as it is? I call for the yeas and nays.

The PRESIDENT *pro tem.* Do ten gentlemen rise to second the call?

The yeas and nays were ordered, ten members rising to second the call.

MR. ARMSTRONG. The whole question was very thoroughly discussed before, and I do not know that it is worth while to enter again into the discussion. The judgment of the Convention was that it would not be wise to deprive the Legislature of the right to increase the salary of judges whose term is twenty-one years when we cannot foresee the exigencies which might make such an increase a necessity. As to the other salaries for judges having shorter terms, it is within the power of the Legislature to change them more frequently, and it is appropriately left there, and with that view I voted for the legislative provision. But

as applied to the judges with such long terms as those of the Supreme Court, I think it is better not to deprive the Legislature of the opportunity to increase the salaries, if they should deem it wise to do so.

I do not desire to repeat the arguments which we have had before.

MR. KAINE. Mr. President: I am in favor of the amendment, and shall vote for it. I do not care whether the terms of the judges are long or short. When a man takes an office with a salary fixed, I would hold him to it to the end. The fact that the terms of the judges of the Supreme Court have been fixed by this Convention at twenty-one years is no fault of mine. I have done all I could thus far to bring it back to the old term of fifteen years.

But, sir, this is one of the causes of corruption, and has been for the last ten years. Some member of the Legislature who desires to be in particular favor with the judge in his district gets up when the appropriation bill is under consideration and moves that the salary of the president judge of the Fourteenth district, if you please, be increased to \$3,500. A member then from another district gets up and says, "I move to include the Sixteenth district," and so on, until there is a majority of the judicial districts of the State put in, and in that way the salaries are raised—a perfect system of log-rolling which has crept into the Legislature, and is one of the sources of the corruption in that body.

I hope we shall not have another war for another half century, and then there will not be so much change in the value of the currency so that prices will rise and fall so much that it will be necessary to make it proper for the Legislature to increase the salaries of the judges. Let them live upon the salary fixed in the beginning; let it be fixed at a proper rate. I want to pay them well; I want the Legislature to fix the salary at a fair and just compensation, so as to command the best talent of the State in the judiciary; and when once fixed, and a man has taken his place under it, I want it to remain so during his continuance in office. Therefore I shall vote for the amendment of the gentleman from Berks.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on the amendment.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Baker, Black, Charles A., Boyd, Buckalew, Bullitt, Darlington, Fulton, Gilpin, Kaine, Lawrence, MacConnell, Mitchell, Purman, Rooke, Russell, Smith, Henry W., Struthers, Van Reed, and Walker—21.

N A Y S .

Messrs. Armstrong, Beebe, Biddle, Bowman, Broomall, Brown, Calvin, Campbell, Carter, Church, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Edwards, Elliott, Fell, Funck, Gibson, Green, Guthrie, Hanna, Landis, Lear, Lilly, Littleton, MacVeagh, M'CLean, Mann, Minor, Mott, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Ross, Sharpe, Simpson, Stanton, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—51.

So the amendment was rejected.

ABSENT.—Messrs Achenbach, Addicks, Ainey, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Brodhead, Carey, Cassidy, Clark, Cochran, Collins, Craig, Curtin, Dallas, Davis, Dodd, Dunning, Ellis, Ewing, Finney, Hall, Harvey, Hay, Hazzard, Hemphill, Heverin, Horton, Howard, Hunsicker, Knight, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Temple, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, President—61.

The PRESIDENT *pro tem*. The question recurs on the section:

MR. EWING. I move to amend by striking out the words "and which shall not be diminished during their continuance in office."

I make this motion because I think the whole subject is covered by the fifteenth section of the article on legislation, which forbids the increasing or diminishing of the fees, emoluments or salary of any officer after his election or appointment.

The amendment was rejected.

The section was agreed to.

The eighteenth section was read as follows:

SECTION 18. The judges of the Supreme Court during their continuance in office shall reside within this Commonwealth, and the other judges during their contin-

uance 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."

Mr. KAINE. I call for a division of that section, the first division to end with the word "elected," in the fourth line.

The PRESIDENT *pro tem*. The question is on the first division of the section, ending with the word "elected," in the fourth line.

Mr. HANNA. Before that is voted upon I desire to ask the chairman of the committee the necessity for the repetition of the words "during their continuance in office?" "The judges of the Supreme Court during their continuance in office shall reside within the Commonwealth," and the other judges "during their continuance in office," &c.

Mr. BIDDLE and Mr. KAINE. That is in the old Constitution.

The PRESIDENT *pro tem*. The question is on the first division.

The first division was agreed to.

The PRESIDENT *pro tem*. The question now is on the second division, beginning with the words "no person shall be eligible," &c., to the end of the section.

Mr. KAINE. I trust that the second division will be voted down. I do not see any necessity for putting a provision of this kind in the Constitution. We have never had anything of that kind, and I do not think we need it now. There are some men that are much better qualified to go on to the supreme bench at twenty-five years of age than others are at forty. A great many men at forty years of age, or any other age, are not fit to go upon the supreme bench or any other bench. Therefore I think we had better not trammel the Constitution with anything of this kind.

I do not know what the age of the gentleman who presided for a few years in my district was, but I think he was about thirty, and he was unquestionably the best judge, far superior to any other that

has been there since I practiced at the bar, with the exception of one. He would have made an excellent judge at twenty-five, and many other lawyers in the State would do the same. I am opposed to putting any limitation of this kind into the Constitution. Therefore I hope this division of the section will be voted down.

Mr. GIBSON. Mr. President: I move to amend this division of the section in the sixth line by inserting "shall be at least forty-one years of age," and in the seventh line "be at least thirty-one years of age," and at the conclusion of the section "and shall have at least twenty years practice in some court of record immediately preceding his appointment or election to the supreme bench, and ten years preceding his election to the common pleas."

The reason is this: A young man admitted at twenty-one years of age has to undergo a probation of twenty years before he is eligible to the supreme bench, but a man may study law and be admitted at thirty-five years and in five years he is eligible for the position. I think that all should have an equal chance, and that the term of probation should be the same. If a man is thirty-five years of age he ought to have twenty years' practice. That will test the sense of the section. I therefore move to amend in the manner I have indicated.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Gibson.)

The amendment was rejected.

Mr. BEEBE. I move to strike out, in the sixth line, the word "forty" and insert "thirty" as the age of a judge of the supreme bench, and in the seventh line to strike out "thirty" and insert "twenty-five" as the age for a judge of the court of common pleas.

Mr. MACVEAGH. I trust the gentleman will move those amendments separately.

Mr. BEEBE. The question can be taken separately.

Mr. MACVEAGH. I confess I do not think the supreme bench suffers now from having excessive youthfulness upon it. If the lawyers of this body will consider, I think they will agree in that opinion, and it certainly has been an opinion expressed very freely throughout the State, that even a younger man upon it than anybody now upon it would not do serious damage to it. There may

be a mistake in this opinion, but certainly there is no general belief that we need to nominate any older men than we have been nominating. There is no general conviction that the people have been running riot on the subject of youth and taking men too young. The story is often told of the enthusiastic Boston delegate who went home from the convention that nominated Bell and Everett, and meeting a gentleman in Boston congratulated him and expected to be congratulated in return. He said: "We have done a glorious thing; we have nominated Bell and Everett; don't you like the ticket?" "Well," said he, "I should have very much preferred to have had my old friend Choate nominated for Vice President." [Laughter.] Said the man, "Choate! why, didn't you know Choate was dead?" "Well," he replied, "he has not been dead a great while, [laughter,] and it seems to me that there is a danger of going into the grave-yards for candidates as well as into the nurseries." You cannot draw any hard and fast line on this subject. Thiers was governing France only the other day at a green old age. Palmerston continued to rule England until a very advanced age. But on the other hand, Pitt ruled England at twenty-three. Napoleon conquered Italy at twenty-seven. Grotius was very learned at thirty. Story was a great jurist long before he was forty, and in every department of human effort the most difficult achievements have been the work of young men. Look at those who have studied science (gentlemen say that law is a science.) Why, the men whose scientific discoveries are a blazon of glory to-day are almost every one under forty. The brilliant men now living, in almost every department of learning, are under forty; and it seems to me in the vast increase in these days in the rapidity of our movements it is evident that men now mature earlier than they used to do, rather than later. There is a danger, of course, of getting rotten before you are ripe; but then there is a danger of rottenness from over-ripeness also.

I do not see that there is any very great danger that we are going to put too much youth on the bench of the Supreme Court. If there is any actual peril to be guarded against let us guard against it, but I do not think the present bench is an illustration of any serious danger, and I do not think there is any necessity of putting up a barrier against the common sense of the

people of this State in this regard. If you have a man who has developed great capacity in the law why not put him on the bench, whenever he is fit to be put there? Let us remember that while it may be desirable to have *viginti annorum lucubraciones*, yet if some man develops a capacity for a judgeship earlier in life, we should not have a constitutional provision forbidding the people from calling him to the seat of judgment.

MR. CORSON. Mr. President: I am in favor of the amendment proposed by the gentleman from Venango, but this section can be abbreviated just one-half and express that idea. If we should strike out all after the word "judge," in the first line, down to the words "common pleas," in the seventh line, and then strike out all after the word "or," in the eighth line, down to "he," in the ninth line, we should have a sentence one-half as long which would express the whole idea. It would read in this way, if thus amended:

"No person shall be eligible to the office of judge unless he be at least thirty years of age, be a citizen of the United States, and have resided in the State five years."

There is the whole of the section. I am afraid that if we strike out forty and insert thirty above I cannot make that motion afterwards, so I move it now.

THE PRESIDENT *pro tem*. The amendment now is to strike out forty and insert thirty.

MR. CORSON. Is an amendment to the amendment now in order?

THE PRESIDENT *pro tem*. It is.

MR. CORSON. I move to strike out all after the word "judge," in the fifth line, down to and including "common pleas," in the seventh line, and then all after the word "age," in the eighth line, down to and including "he," in the ninth line. That requires all the judges to be thirty years of age.

THE PRESIDENT *pro tem*. The question is on the amendment.

The amendment was agreed to.

THE PRESIDENT *pro tem*. The question now is on the section as amended, which will be read.

THE CLERK read as follows:

"No person shall be eligible to the office of judge unless he be at least thirty years of age, be a citizen of the United States, and have resided in this State five years next proceeding his appointment or election."

Mr. BUCKALEW. My idea in regard to this section was this, and I beg pardon of the Convention for detaining them to change the numbers "forty" to "thirty-five" for judges of the Supreme Court, and "thirty" to "twenty-five" as to judges of the common pleas, though I confess my reflections on this subject, as provided for in our State and our federal Constitutions, has led me to the opinion that these limitations on the people with reference to the selection of public officers on the ground of their having attained or not having attained particular ages are of very little account. I would authorize the people certainly to elect a judge of the Supreme Court when he should be thirty-five years of age. We have increased the term of service in that court to a period of twenty-one years, and if the people find a very competent man thirty-five years of age and desire to nominate him, why should the fundamental law forbid them to do so? And so if a gentleman who has been thoroughly educated and who, having entered upon the practice of the law at the age of twenty-one years, during the period of four or five years, has shown high ability in the practice of his profession, why should not the people be permitted to select him for the common pleas? This matter of capacity and fitness for office does not depend so much upon age as upon mental constitution and opportunities, and to put into the Constitution arbitrary limitations carried to any extreme limits seems to me to be against the public interest. Therefore I am prepared to alter these numbers from "forty" to "thirty-five" and from "thirty-five" to "twenty-five"

Mr. MACVEAGH. The gentleman will allow me to say that has been done, and now we had better vote down the entire section. I agree with the gentleman.

Mr. BUCKALEW. I do not propose to vote down the section, but I was not present when the amendment was adopted. I do not like this limitation of thirty years for judges of the common pleas courts. Many judges have been put upon the bench at twenty-six and twenty-eight years of age who were found to be among the ablest judges of the State; John B. Gibson, for instance.

The PRESIDENT *pro tem*. The remarks of the gentleman might have applied before the vote on the amendment; certainly they are not applicable to anything now in the section.

Mr. MACVEAGH. The gentleman is not satisfied with our action.

The PRESIDENT *pro tem*. Then a motion to reconsider can be made.

Mr. BUCKALEW. My remarks are applicable to the section. If the Emperor Napoleon at the age of twenty-eight was able to conquer all Italy, I should suppose our judges would be able to conquer the difficulties of the law at a similar age.

Mr. ARMSTRONG. I do not attach any great degree of importance to this section, and I think the good sense of the people may be safely entrusted with the power to select their judges in their sound discretion. I think it would be just as well to vote the section down.

The PRESIDENT *pro tem*. The question is on the section as amended.

The section was rejected.

The CLERK read the next section as follows:

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.

Mr. MACVEAGH. What is that? I submit to the Convention that there is no necessity for this section. I trust we shall vote it down. It is simply a recognition of the statutes.

Mr. ARMSTRONG. It is necessary. It is a modification of the fifth and sixth sections of the fifth article of the existing Constitution, adapting it to the present condition of the chancery law of the State. I think it is important, and it ought to go in.

The PRESIDENT *pro tem*. The question is upon the section.

The section was agreed to.

Mr. ARMSTRONG. I offer now a new section to come in at this place. I invite the attention of the Convention to it, as it is a new section on a matter of law of exceeding great importance; and I will take occasion to say, if it meet the approval of the Convention, I should like the Convention to adjourn after it is read, so that it may be printed and be placed to-morrow in the hands of delegates.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK read as follows:

"Whenever, within one year after the official publication of any act of Assembly in the pamphlet laws, and not thereafter,

it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that any fraud, bribery or undue means were employed to procure the passage or approval of such law, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding which shall be ordered of course, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct, shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be tried upon proper pleadings by one of the judges of the Supreme Court in whatever county the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that bribery, fraud or false pretenses have been used to procure the passage or

approval of the same, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within six months and not thereafter to a writ of error as in other cases.

No officer of the Commonwealth, nor any officer or member of the Legislature, shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution.

Mr. ARMSTRONG. Now, I have no objection, if it be the pleasure of the Convention to go on and consider this section but I have had this offered at this time with a view of having it printed.

Mr. BOYD. I move that we adjourn. I am perfectly exhausted.

The PRESIDENT *pro tem*. It is moved that the Convention do now adjourn, and that the amendment just offered be printed.

The motion was agreed to, and (at six o'clock and forty-three minutes P. M.) the Convention adjourned.

ONE HUNDRED AND THIRTY-THIRD DAY.

WEDNESDAY, July 2, 1873.

The Convention met at 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.

RESIGNATION OF MR. WOODWARD.

The PRESIDENT *pro tem.* A communication has been received, which will be read.

The CLERK read as follows :

PHILADELPHIA, July 2, 1873.

HON. JOHN H. WALKER,
President *pro tem.* Constitutional Convention :

DEAR SIR :—In pursuance of a purpose announced some ten days since in the Convention, I hereby respectfully resign my seat as a delegate at large in that body.

I am, with great respect, your obedient servant,

GEO. W. WOODWARD.

MR. ALRICKS. I move that the resignation be not accepted, but that leave of absence be granted, hoping that Judge Woodward will return to take his seat in the Convention before our final adjournment.

MR. BROOMALL. I hope the resignation will not be accepted.

MR. COCHRAN. I do not see why any member has not a right to resign his seat in this Convention. If he chooses to resign his seat, what control have we over him? I am opposed to the proposition in the form in which it is submitted.

MR. DARLINGTON. There seems to be no propriety in filling the office with another member now. Therefore I prefer leaving it just as it is, without accepting his resignation.

MR. ALRICKS. Will the Clerk please read the motion?

The CLERK. Mr. Alricks submits the following resolution :

Resolved, That the resignation be not accepted, but that leave of absence be granted, hoping that Judge Woodward will return to his seat before final ad-

journment, and again take part in the deliberations of the Convention.

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

MR. CORBETT. Judge Woodward announced distinctly some week ago or more, that if the Convention continued to sit he would resign and would not return, and I do not see why we should not accept his resignation. Certainly we cannot expect him back here to take part in the final deliberations of this body, and his seat ought to be filled.

MR. COCHRAN. I apprehend that any member of this Convention has a right to resign, and I do not see what control we have over that matter. In addition to that, this resignation is presented here in pursuance of a notice previously given that it would be made, and I really regret that the resolution has been presented in the form in which it is, because it puts several of us who I know share my feelings and entertain the high respect for Judge Woodward that I entertain for him, in something like a false position.

I move to amend by striking out all after the word "resolved," and inserting "that the resignation be accepted and that the matter be referred to the delegates at large last named in the proclamation of the Governor."

MR. KAINE. A resignation was sent in here by the distinguished delegate from Schuylkill, (Mr. Bartholomew,) and the Convention refused to accept it. It was laid on the table, and that delegate thought better of the subject and returned in the course of a few days and again took his seat. I hope that the amendment offered by the gentleman from York will not be agreed to and that the original resolution will be passed. Judge Woodward may think better of this and return in the course of a week or two and assist us with his counsels in the deliberations of this body.

MR. HEMPHILL. If in order, I move to postpone the whole subject for the present.

MR. HARRY WHITE. I move to amend that motion so as to make it indefinitely.

Of course it is understood that I move this for the purpose of enabling me to make an observation, and then unless some other gentleman desires to speak upon the subject I will withdraw the motion. I merely wish to say that I hope the good taste of this Convention will be exhibited in this matter by passing upon it without discussing it. I recollect very well when the resignation of the late distinguished delegate Mr. F. B. Gowen was received it was laid on the table without discussing it. I am satisfied that Judge Woodward, on "sober second thought," will reconsider this matter and continue to remain with us until the Convention adjourns. I hope, therefore, that the motion to postpone for the present will be withdrawn and that we shall pass the resolution moved by the delegate from Dauphin. I now withdraw the motion to postpone indefinitely.

Mr. LILLY. I hope this matter will not be postponed; but I hope the resolution will be further amended by striking out the name of Judge Woodward and saying that no resignation shall be hereafter accepted; and that will settle the whole matter, not only as far as Judge Woodward is concerned, but as to other members. Now, I think we are so near the conclusion of our labors that we need the best talent in this Convention; and as to bringing new men in, they do not know what we have done and they can be of very little service to us; and so I think we had better allow the resolution to come up and strike out the name of Judge Woodward and say that no resignation shall be hereafter accepted.

Mr. BOYD. Will the gentleman allow me to ask him a question? If the gentleman on the floor were to tender his resignation—

Mr. KAINE. I understand the motion to postpone indefinitely is withdrawn.

Mr. HARRY WHITE. I have withdrawn it.

The PRESIDENT *pro tem*. The question is on the motion to postpone for the present.

Mr. KAINE. That is not debatable.

The motion was not agreed to.

Mr. LILLY. Now I move to strike out the name of Judge Woodward and insert that no resignation will be hereafter accepted.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Carbon (Mr. Lilly.)

Mr. ALRICKS. Mr. President: I trust that the amendment will not be adopted. This Convention is not certainly prepared so to stultify itself. It is undoubtedly the right of any delegate when he thinks proper to resign the position that he holds here; and we cannot compel him by any action upon our part to remain with us. I trust that this amendment will not prevail. I must confess that I have been surprised at what I supposed was the indecent haste on the part of some persons in desiring to accept this resignation. We all know that we refused to receive the resignation of the gentleman from Schuylkill (Mr. Bartholomew,) We all know that in the law there is a *locus poenitentiae*; and I was willing to extend to Judge Woodward the same courtesy we extended to the distinguished delegate from Schuylkill. There is no member of this Convention who can conjecture what change a few days may work in his mind. I apprehend that we ought to receive any resignation with great care, and I would always give to a gentleman who wanted to resign his seat an opportunity for reflection. I hope the House will not adopt the motion of the gentleman from Carbon, but that they will pass the resolution as it was originally offered, both in justice to the House and the delegate.

Mr. CARTER. Mr. President: I cannot conceive that there is any indecent haste about the matter, nor can I conceive that the case is at all parallel with that of the gentleman who sits on my right (Mr. Bartholomew.) His resignation was apparently submitted somewhat without full consideration, whereas this case is utterly unlike it, because Judge Woodward announced more than a week ago his deliberate intention to resign.

Now, what I want to get at is to keep up this body as full as possible to a working capacity, and I think a resignation thus deliberately made and deliberately announced does not come under the category of the other, and that there is no indecent haste manifested in regard to the matter by simply accepting it. It is treating a man like a child when, after he has deliberately announced a certain intention and then carried it out, you say to that man in a word that he does not know his own mind. I think it is much better, and that, with as little delay as possible, the amendment of the gentleman from York should be adopted and his place be filled, and thus we shall have

another working member to go on right through this work.

Mr. HAY. I desire simply to say one word. It is that I think those gentlemen who have been alluding to Judge Woodward as a person likely to withdraw his resignation very much mistake his character. Judge Woodward would never have presented this resignation had it not been his intention to adhere to it. It is very well known to every member of the Convention what remarks were made by that gentleman in the discussion upon the occasion of the presentation of the resignation of Mr. Gowen. He stated substantially that that gentleman would not have presented his resignation unless he intended it to be accepted, for he was a man who knew his own mind. As a matter of course, Judge Woodward is a man of like character and would not act in an uncertain or trifling manner towards this body. Certainly after having announced his intention to resign and then presenting his resignation, it is not at all likely that he will withdraw it now. I do not think the Convention would be acting in a manner which is in accordance with its own dignity or with due respect toward the gentleman who has presented his resignation, in hesitating in the matter at all. No man would regret more heartily, more sincerely than myself, the absence of Judge Woodward from the sessions of this body. His great presence is of infinite advantage to us here. His wisdom, his long experience and his high character render his aid invaluable. But so far as I am concerned, I will not vote as if I did not believe that he means exactly what he says, on this occasion or on any other.

Mr. TEMPLE. I think, Mr. President, one word more might be added to what has already been said. That is this: If the Convention expects to go on and finish its labors, there is no necessity whatever for delaying the acceptance of this resignation. There is no occasion for any delegate upon this floor denying the fact that Judge Woodward has resigned in consequence of an engagement made many weeks ago; and if we are to conclude our labors this summer it is utterly impossible for him to be here. He has said that to more than one delegate.

I submit, Mr. President, that in view of what Judge Woodward stated at the time Mr. Gowen's resignation was handed in, it is not wise for the Convention now to delay the acceptance of his resignation.

He then said that Mr. Gowen being a gentleman who never did any act unless he fully considered it, he was in favor of accepting his resignation, and Judge Woodward has certainly deliberated upon this question.

The PRESIDENT *pro tem*. The question is on the motion of the gentleman from Carbon (Mr. Lilly.)

The motion was not agreed to.

The PRESIDENT *pro tem*. The question recurs on the motion to postpone the matter for the present.

Mr. CURRY. I shall vote against the acceptance of the resignation of Judge Woodward. We are almost through our work, and I think that the resignation of Judge Woodward should not be accepted, nor that of any other member of this Convention at this period of our labors. In conversation with the President of this Convention, Mr. Meredith, he expressed the hope when Mr. Gowen offered his resignation that this Convention would refuse to accept it; and now here, really at the end of our work, if we accept this resignation, perhaps to-morrow morning one or two others may offer their resignations, and so on until the responsibility of the work, either for good or for bad, will rest upon a few members who have endured the toil from the beginning. For one, I shall vote against it.

Mr. SHARPE. Mr. President: I hope this resignation will not be accepted at present. It is well known that a short time ago this Convention passed a resolution to adjourn over the heated term. Unfortunately that resolution was rescinded. I have no doubt that Judge Woodward's resignation is the result of the rescinding of that resolution. He feels himself physically incompetent to attend the meetings of this Convention during this excessively hot weather. Now, sir, the probability of this Convention remaining in this city for a very much longer period is, to say the least, exceedingly uncertain. We may adjourn at any time over the heated term, and if we do so I have no doubt that Judge Woodward will gladly return and participate in the deliberations of this body. Therefore, I think it would be improper to act upon this resignation at the present time. If it were a fixed fact, which by no means it is, that this Convention would remain in session without adjournment until its labors be ended, then I would see no reason for refusing to accept Judge Woodward's resignation; but because of the

occasion of his resignation, and because that occasion may at any moment be removed, I shall vote consistently to the end against the acceptance of this resignation.

MR. PURMAN. Mr. President: The Convention will recollect that Judge Woodward announced to the Convention that unless the resolution to take a recess until the third Tuesday in October prevailed, he would be compelled to resign his seat in the Convention. The grounds upon which Judge Woodward based his determination to resign his seat in the Convention were that his health would not permit him to remain in the city of Philadelphia and attend the sessions here during the months of July and August, and that he was convinced that if we proceeded to finish the labors of the Convention at the present session, it would run to the first or middle of August. Judge Woodward made no other objection to remaining in this Convention. He had not become dissatisfied with the proceedings of the Convention, or with the work of the Convention, and he was not unwilling to continue in session and in labor with the members of this House to complete the good work they had begun. Judge Woodward, supposing that the Convention about the first of July would take a recess, had other arrangements, I may be permitted to say, such as he could not well disregard. Being disappointed in his expectations that the Convention would take a recess, and being unable to meet his other engagements and remain in session with the Convention, he felt it to be his duty to his prior engagements and to his health to say that he would resign his seat in the Convention.

I am very sorry, as a member of this Convention, to part with Judge Woodward, and I should be much pleased if the judge would reconsider his action, reverse his decision, and return as soon as convenient to his seat in this Convention. But from our knowledge of Judge Woodward it is hardly to be expected that he will reconsider his action, that he will reverse his determination; and yet I prefer that the Convention should not act this morning upon Judge Woodward's resignation. I prefer that we should deliberate upon it for a few days. The judge himself should have the benefit of a few days to consider his action. We cannot tell how much weight the manifestations here this morning may have

upon Judge Woodward when he comes to reconsider this question. When he learns the anxiety of the whole Convention that he should remain here and assist us to the completion of our labors, when he takes into consideration the importance of his remaining here for the success of our work, when he reviews the whole ground, it is *possible* that Judge Woodward may reverse his decision. I admit that it is not very probable; but it is right and proper that the Convention should do itself justice, should do Judge Woodward justice, by giving a sufficient time for further reflection and future action. Give us the benefit of the possibility of Judge Woodward reconsidering this question and reversing his action. Let the matter stand where it does now for a days. Or what is the same thing in effect, let his resignation be referred to the fourteen delegates at large last named in the Governor's proclamation, and until they act upon it by electing a successor the judge still remains a member of the Convention. The reference of the resignation to the fourteen delegates at large does not amount to an acceptance by the Convention of the resignation. The Convention, before action by the fourteen delegates in the matter, might discharge the said delegates from the consideration of the subject, and allow Judge Woodward to recall his resignation, and therefore I can secure my end either by postponing the further consideration of the question, or by a reference under the resolution of the gentleman from York (Mr. Cochran.) It is very clear to my mind that Judge Woodward is still a member of this body, with all the rights and privileges of the same until his successor is duly elected.

But the Convention will not misapprehend me. I am not authorized to speak for Judge Woodward, and all I have said has been upon my own authority. I know that when a gentleman of the high character of Judge Woodward, of his culture and decision of character, determines upon a course of conduct he seldom, if ever, retraces his steps.

MR. COCHRAN. I wish to modify my amendment. I will strike out all about the resignation being accepted, so as simply to have it read that the resignation be referred to the committee of fourteen delegates at large last named in the proclamation of the Governor.

THE PRESIDENT *pro tem*. The question is on the amendment as modified to refer

the resignation to the fourteen delegates at large last named.

Mr. COCHRAN. One word. I hold that this Convention has no control over the action of a member who has tendered his resignation, and that this resignation having come in here, there is nothing left for us to do but to refer it to that committee under the statute. Further, so far as precedents in other cases have been pleaded, I hold that those precedents were wrong, and that we should not have adopted the course that we did in regard to them, and that the sooner we depart from a wrong precedent the sooner we shall relieve ourselves from a course of action that is alike embarrassing and unusual, to say the least of it, in a body of this kind. I think we have nothing to do when a resignation is submitted but to refer it to the proper committee.

Mr. TEMPLE. I call for the yeas and nays on the amendment.

Mr. CORBETT. I second the call.

Mr. S. A. PURVIANCE. It strikes me, Mr. President, that the course indicated by the resolution of the gentleman from Dauphin is the course which this Convention ought to pursue. Whilst I admit that Judge Woodward has the undoubted right and power of resigning his position in this body, that resolution only looks to a reconsideration on his part of the step which he has taken. It was not until last evening that I learned that Judge Woodward had any intention of resigning. There are considerations which may be addressed to Judge Woodward himself which may induce him to reconsider his resignation. For instance, Judge Woodward's name to this Constitution would be of very great importance.

Mr. MACVEAGH. I appeal to gentlemen in the Convention to listen to our colleague from Allegheny. It was impossible for him to be heard. Nearly everybody in the Convention was talking while he was endeavoring to address the body, and I am very sure we all desire to listen to him, and I trust he will go on and say what he has to say.

Mr. S. A. PURVIANCE. All I have to say is but brief. I was just about saying that Judge Woodward may be addressed with such considerations as will induce him to change his intention of resignation. For instance, it is all-important that the name of Judge Woodward should be signed to the new Constitution. Perhaps he has not thought of that himself. That name will give influence in the

passage of the Constitution before the people of the State. Now, sir, Judge Woodward possibly has done this without very great reflection. Judge Woodward has probably done this because he conceived the idea that we would not give him leave of absence for three or four weeks; but I am sure there is not a member of this body, after having observed the course of Judge Woodward here and his attention to his labors in this Convention, who would refuse him that boon.

Now, sir, the resolution of the gentleman from Dauphin contemplates the meeting with Judge Woodward, addressing him the considerations such as we have mentioned, to see whether he may not be induced to change his determination to resign. I trust, therefore, that the resolution may be adopted; but if, on the other hand, Judge Woodward persists in it, then, as a matter of course, the course indicated by the gentleman from York (Mr. Cochran) would be the correct one, that is to receive his resignation.

The PRESIDENT *pro tem*. The question is on referring the resignation to the committee of fourteen.

Mr. DALLAS. I trust that without saying anything, as I understand this resolution does not say anything as to whether the resignation of Judge Woodward is to be accepted or not, this motion of the gentleman from York (Mr. Cochran) will prevail. Judge Woodward was chairman of the fourteen delegates to whom it is now proposed to refer his resignation, and I think that those gentlemen who were associated with him in those fourteen can be trusted to approach him and to endeavor to induce him to retain his seat here if possible. It is, I believe, important, as the gentleman from Allegheny has said, that Judge Woodward should be induced to remain if it can be done; but if it cannot be done after an effort in that behalf honestly and sincerely made, then his seat should be filled by some person else, for I do not think that a single seat in this body should remain vacant even towards the close of its labors.

Mr. BIDDLE. I wish to hear the resolution read.

The PRESIDENT *pro tem*. The motion is to refer to the committee of fourteen. The amendment of Mr. Cochran makes it read:

Resolved, That the resignation be referred to the fourteen delegates at large last named in the proclamation of the Governor.

Mr. CORBETT. On that I ask for the yeas and nays.

Mr. TEMPLE. I second the call.

Mr. LAWRENCE. Several gentlemen call for the reading of the original resolution, which is important.

The PRESIDENT *pro tem*. The original resolution will be read for information.

The CLERK read as follows:

Resolved, That the resignation will not be accepted; but that leave of absence be granted, hoping that Judge Woodward will return to his seat before the final adjournment and again take part in the deliberations of the Convention.

Mr. STANTON. Is that before us now?

The PRESIDENT *pro tem*. That is not before the Convention now. The question now is on the amendment of the gentleman from York (Mr. Cochran) to refer the resignation to the committee of fourteen delegates at large last named in the proclamation of the Governor, on which the yeas and nays are called for. The Clerk will call the roll.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Achenbach, Beebe, Bullitt, Carter, Cochran, Corbett, Cuyler, Dallas, De France, Ellis, Gilpin, Hazzard, Knight, MacConnell, M'CLean, Mann, Porter, Purman, Rooke and Walker—20.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Biddle, Bigler, Black, C. A., Bowman, Boyd, Broomall, Brown, Calvin, Church, Curry, Darlington, Edwards, Ewing, Fulton, Funck, Gibson, Green, Guthrie, Harvey, Hemphill, Hunsicker, Kaine, Landis, Lawrence, Lilly, Littleton, Metzger, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Purviance, Samuel A., Reed, Andrew, Reynolds, Ross, Russell, Sharpe, Simpson, Smith, H. W., Stanton, Struthers, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, White, Harry and Wright—60.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Bartholomew, Black, J. S., Brodhead, Buckalew, Campbell, Carey, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curtin, Davis, Dodd, Dunning, Elliott, Fell, Finney, Hall, Hanna,

Hay, Heverin, Horton, Howard, Lambertson, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Mott, Newlin, Pughe, Purviance, John N., Read, John R., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, *President*—53.

The PRESIDENT *pro tem*. The question recurs on the resolution of the gentleman from Dauphin (Mr. Alricks.)

The resolution was agreed to.

INVITATION FROM WILLIAMSPORT.

Mr. PARSONS. I desire to offer a communication from the mayor of Williamsport, transmitting resolutions passed by the council of that city inviting the Convention to Williamsport.

The communication was read as follows:

MAYOR'S OFFICE,
WILLIAMSPORT, PA.,
July 1, 1873. }

Hon. JOHN H. WALKER,
President pro tempore of the Constitutional Convention:

SIR:—At a meeting of the council of the city of Williamsport, the following resolutions were unanimously adopted:

Resolved, That the council of the city of Williamsport do hereby cordially invite the Constitutional Convention of Pennsylvania to hold its summer session in the city of Williamsport.

Resolved, That the mayor of the city be requested to transmit this invitation to the Convention, and tender therewith the hospitalities of our citizens.

I cheerfully comply with the request contained in the second resolution, and, in common with all of our citizens, I trust that the invitation will be accepted. Our large and commodious court house will be placed at the disposal of the Convention, and every endeavor will be made by the citizens of Williamsport to render the stay of the delegates agreeable and pleasant.

Respectfully yours,

G. W. SHARKWEATHER,
Mayor of Williamsport.

Mr. STANTON. I move that the invitation be received, and the thanks of the Convention tendered to the mayor and council of Williamsport.

The motion was agreed to.

Mr. STANTON. I now move that it be laid on the table.

The motion was agreed to.

LEAVES OF ABSENCE.

Mr. BEEBE. By request I ask leave of absence for Mr. Horton on account of sickness in his family. Leave was granted.

Mr. S. A. PURVIANCE asked and obtained leave of absence for himself from to-day till Wednesday next.

Mr. WRIGHT 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 a few days from to-day for Mr. Russell.

ADJOURNMENT OVER JULY FOURTH.

Mr. WRIGHT. I offer the following resolution:

Resolved, That this Convention adjourn to-morrow at one o'clock, to meet on Tuesday the eighth inst., at three o'clock P. M.

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

Mr. WRIGHT. I ask leave to modify my resolution so as to have the Convention meet on Monday the seventh, at three P. M.

The PRESIDENT *pro tem*. The resolution will be so modified.

Mr. AINEY. I move to amend by striking out all after the word "resolved" and inserting:

"That this Convention will take a recess until the second Tuesday of September next as soon as the article on the judiciary shall have passed second reading."

Mr. BEEBE. I move to postpone the whole subject indefinitely.

Mr. CARTER. I have not troubled this Convention with one word on the matter of adjournment. I am the fourth oldest man in this body, and I am willing to remain in my seat, although, like the hart, I pant for the cooling water brooks and the shade of the country. I have no doubt that if we work on in the spirit and in the manner that we have worked for the last eight or ten days, we shall complete our labors and have the satisfaction of submitting our work to the people. We who read the papers cannot disguise the fact that when we agreed on Friday week—a day which I call our black Friday—to adjourn over the summer, we brought discredit and disgrace on the work of this Convention. It is

true that then I voted for an amendment somewhat similar to this in character, offered by the delegate from Delaware, (Mr. Broomall,) that we would adjourn on the twenty-seventh of last month; but I voted for that believing that if we postponed the subject of adjournment for one week and went to work vigorously and earnestly during that period, we should make such progress toward the completion of our labors that we would cease this eternal agitation of the subject of adjournment. We did go to work and we have made such progress that we have not heard anything on this subject of adjournment since, and I now believe that we should put the question of adjournment out of sight, at least for the present, and work on until we complete our labors. We are making most excellent progress, and I am willing to remain here and suffer inconvenience, if it will enable us to get through. There is no man here who possibly can suffer from heat more than I do, but when I accepted the position of delegate in this body I expected to dispense with some of the comforts of home, and I am now willing to do so.

Mr. BEEBE. Mr. President: I am averse to taking up the time of this Convention when I see it is repugnant to the feelings of so many gentlemen here; but the adjournment of this Convention over to Tuesday may be all well for the members about Philadelphia and those near enough to go home, keeping us week in and week out, and day in and day out, and month after month for their own pleasure and at our expense. This proposed adjournment means nothing to me but a waste of so much additional time to members from distant parts of the State. It puts us forward in the cholera season, fit subjects for the "carnival of death" prophesied by the city papers, and liable to all the sickness which hot weather is likely to bring in the city of Philadelphia, and just postpones the work of this Convention that much.

Now, sir, if we see that we cannot stay here any longer, I shall be willing at any time to adjourn to the third Tuesday in October instead of occupying the time of these gentlemen. But what do we gain by adjourning for five days? We read in the history of the old Convention that they worked right along through the summer and sat on the fourth of July in order to accomplish their own work and to meet the wishes of the people. It is a degradation to this Convention, and it is

a dishonor to waste precious time and carry the work into the hot weather, for the pleasure of those locally situated.

Mr. AINEY. I hope the motion to postpone indefinitely will prevail. I hope then the Convention will take up the question of recess and dispose of it in such manner as will reflect credit upon it, and that will represent the true judgment of the House, independent of any clamor that has been made by the newspapers.

It must be apparent to every member that this Convention cannot possibly complete its labors satisfactorily within the period of the next two months. ["No." "No."] Gentlemen may say "no," but there is very important work yet for this Convention to do before we shall be prepared to submit our work to the people, and we must either do it or neglect to do that duty with the deliberation which is expected of us.

Now, sir, I hope that this Convention will complete the present or second reading of the article on the judiciary, and that it will then take a recess until September. I believe that the only interest the people have in our continuing to sit during the hot weather, or the period within which we shall complete our work, relates wholly to its submission at the October election. Now, shall we be prepared to submit this new Constitution at the October election? I, for one, am not in favor of its submission then. Even if it were not apparent to me, as it must be to members, that we cannot submit it then, if we so desired, what possible interest can the people have in our sitting here in this sweltering weather, within a square or two of the most unhealthy locality that can perhaps be found in these United States.

Mr. SIMPSON. I deny that it is unhealthy.

Mr. AINEY. The gentleman denies it. All I ask the gentleman to do is to walk a few squares south of this hall, and if he does not find it as I have stated, I will then admit I am wrong.

Mr. SIMPSON. There is no healthier spot on the face of the globe.

Mr. AINEY. Now, sir, I hope this Convention will look at this question as it stands. The law under which we were elected provides that we shall advertise our work in the newspapers of this Commonwealth for the period of three months before the election.

Mr. LILLY. Three weeks.

Mr. AINEY. No, sir, for the period of three months.

Mr. LILLY. Thirty days.

Mr. AINEY. The gentleman is mistaken; I think I am informed it is three months. I have not referred to the act.

Now, in order to advertise it the required time before the October election, we must complete the new Constitution and have it in the newspapers by the 15th of July. That is a physical impossibility unless we pass it as a whole; and in view of the action that we had yesterday, I say that we might perhaps as well pass the thing as a whole if members are determined to continue the sessions during the hot weather. I say in the light of what we did yesterday in an important article which had passed in committee of the whole after full discussion and consideration, important amendments were adopted by the Convention yesterday indicating one judgment, and before twenty minutes had passed around the Convention reversed its own judgment and voted down the whole section. Is that creditable action? Is that the kind of work we should do here if we expect the people to ratify it? We are framing a fundamental law which may stand untouched for half a century. Let us be careful and not spoil it by unnecessary haste now.

I trust gentlemen will meet this question independent of the clamor of newspapers. We know that the people can have no interest in our sitting here. They certainly would not ask us to remain in session during this hot sweltering weather if they understood it to be our purpose not to submit our work at the October election. If we are not to submit it then, let us take a recess. If gentlemen desire to go home and save their health why shall they be kept here? I hope this motion to postpone indefinitely will prevail, and that then the question may be taken on a recess and disposed of uninfluenced by any outside pressure.

Mr. NILES. Mr. President: I believe that this is the question of temporary adjournment we have already had before us, and I hope that the delegates here will see manifest injustice as it now stands towards the delegates who live in distant parts of the State. There are many delegates on this floor who have not been at home more than once since the last of February, and I am among that number. Now, you propose to adjourn to-morrow afternoon. What good is that to me or those similarly situated, to my friend on

my left, (Mr. Bowman,) to the delegate from Clarion, (Mr. Corbett,) or to the delegate from Washington in my front (Mr. Lawrence?) It may be convenient to those gentlemen living in the immediate vicinity of Philadelphia to stay here until to-morrow afternoon, then take an afternoon train and spend the anniversary of American independence with their families, and leave us who are not so favorably situated, who are three hundred miles from our families, here to swelter in the heat of the city.

There is one thing that I hope this Convention will settle this morning, and that is either not to adjourn but stay in our seats during the fourth day of July, as to which I am agreed, having no temporary adjournment at all, or else adjourn over this evening at six o'clock until Tuesday morning next. It seems to me that common fairness toward the delegates who live in the extreme parts of the State should induce this Convention to do one or the other, and I do not care ten cents which. If it is the judgment of the Convention to stay here and do our work, to have no adjournment, to leave the holiday to itself, I am entirely agreed and willing to stay; but I say it is unfair to the distant delegates to stay here until to-morrow, then adjourn for a day, and leave us here. I am opposed to the resolution as it now stands.

Mr. LILLY. I am entirely in accord with the sentiments expressed by the gentleman who has just taken his seat. I can leave the city of Philadelphia and get home in four hours, but I am for staying here and sitting on the Fourth of July, doing our work and getting through.

The argument of the gentleman from Lehigh (Mr. Ainey) is far-fetched and without any foundation as far as he is concerned. He goes home every night and comes back when he pleases, and leaves the rest of us to stay here and do the work of the Convention; he comes here when his business allows him to do so. As for this being the hottest place in the world, it is the purest nonsense in the world to talk that way. Not a man in this Convention is sick; we have been here all the time. He talks about death stalking around. Why, sir, that is the biggest humbug that ever was! I am surprised the gentleman should talk of such things here on this floor to men of sense. If he was talking to children who did not know anything, it might amount

to something, but it is perfectly ridiculous here.

I am surprised that my friend from Luzerne (Mr. Wright) offered the resolution at all. If he wants to go home, we will give him a leave of absence to go to Luzerne county and spend the Fourth of July, if he desires, but let us stay here. I believe we can keep a quorum, and go on with the work, get through the judiciary report, then take up the railroad report and get done. Then after we get these articles through second reading, I am willing to have an adjournment of two or three weeks. I would not agree to it longer than three or four weeks anyhow. Let us do this and have that recess, and then come back and pass through third reading and submit our work to the people. The gentleman shows how much he knows about it when he talks about three months' advertisement, when the law itself says four weeks, and that is all it ought to say that the amendments shall be advertised. We can submit this Constitution at the October election, and the people of the Commonwealth expect it to be submitted then. Every man in favor of reform in this city and in the State expects that it will be submitted to the people in October. We can do it. There is no use in our dilly-dallying and wasting time about an adjournment. I hope this resolution will be voted down.

Mr. AINEY. I rise to explain—

The PRESIDENT *pro tem*. The delegate can explain, but not make a speech.

Mr. AINEY. I did not say that I saw death stalking around the streets or that Philadelphia was the unhealthiest city in the United States, for I believe the reverse. I said that within a square or two of this place the filth and degradation of the population were such, and any member can see, who will take the risk to go there, that in view of the known and certain approach of pestilential disease, we shall be in very great danger if we continue in session here. That was what I said or intended to say.

I desire to say one word more. The gentleman from Carbon (Mr. Lilly) is very difficult to please. On Saturday last he gave me a scolding in private for not voting with him for an adjournment. He did not want to continue in session and work on then. He wanted to go home, but he is very anxious to go on now—

Mr. TEMPLE. I object. This is not a personal explanation.

MR. CUYLER. I know the House is impatient, but I have not before said a word on this question of adjournment, and only want to say one word now.

I, for one, do not at all agree with the gentleman from Carbon that it is desirable to submit this Constitution to the people in October. On the contrary, I think it the most undesirable of all things. We must have a separate election and a separate vote, and it is simply preposterous to talk about submitting it to the people at our ordinary October election.

Now, sir, I think the impatience of the House, the irritability of its temper, and the disorder which constantly prevails here ought to be a demonstrative proof to gentlemen's minds that the time has come when we should adjourn. And I am not one of those who are to be moved from my firm convictions on that subject by some little newspaper clamor which is founded upon no proper consideration. The public are far more interested in our doing our work thoroughly, properly and efficiently than they are in doing it speedily. The people do not expect us to sit here at the sacrifice of health and comfort and in a condition of mind which is wholly incompatible with the proper discharge of our duties. Therefore if the House refuses to agree to the motion to postpone, I shall move to strike out of this resolution "the eighth of July" and insert "the second Tuesday of September."

MR. SHARPE. I have not said a word on any former occasion on the subject of adjournment, and up to the present moment I have been opposed to taking a recess by this Convention; but, sir, I am well satisfied that the time has now come when it is the duty of this Convention to adjourn over the heated term. It is, above all things, important that our work should be carefully and well done, and we have just reached that period in our deliberations when the utmost care and consideration are required. It must be manifest, from the temper of this Convention during the last ten days, that we are not giving that deliberate consideration to the subjects that have passed in review before us which their importance demands.

Now, sir, I do not believe that it is at all possible to submit our work to a vote of the people at the regular election in October. That seems to be granted all around. If that be conceded, what is the importance of finishing our work now? The question of two or three months' time is

of very little importance; and I am well satisfied that when the people come to understand the reasons for our adjournment they will sanction it and consider it well founded. I believe that by continuing in session now we cannot get through our work well before the first of August, and perhaps not that soon. There are many questions that will arise upon third reading. There are many questions which delegates will want to reconsider, will want to go over the ground again, and see whether they ought to be finally passed or not. It is true that we expect to get through second reading very rapidly; but, sir, I say the third reading of the articles is of the utmost importance, because we may discover among the articles we have already passed some that require discussion, and whose merits ought to be well sifted, and which we may finally determine to reject altogether. We are not in that frame of mind, this is not the condition of weather, which will enable us to do this work in the manner in which it ought to be done.

MR. DE FRANCE. Mr. President: I suspect and believe that I am the only member of this Convention who has attended every session since it commenced. I have been home but once.

Let us take a little review of the history of this Convention. What has been the fact? How was it in cold weather? Had we a quorum hardly ever in the mornings? Is it not true that for one half of the time during the cold weather we had no quorum present to do business? We have had as large meetings since the weather has become warm as we had in the cold weather.

MR. BIDDLE and others. Larger.

MR. DE FRANCE. And larger. One day recently we had one hundred and sixteen votes cast in this Convention. Now, sir, what is the fact as to adjournment? Is it not true that if we do adjourn the members, with the exception of some of the rich men of this Convention, will go home and do nothing, or will they go into their offices and work, and will they not sweat just as much as they do here? Some of the members who have cottages at the watering places will go to them; but the fact is that the majority of the members of this Convention will go home and go to work and make money.

What is the farther fact? That the majority of the members of this Convention have made money all the time during its

sessions by attending to their private business, whilst the minority have not made any, but have spent nearly all they have earned by way of salary in their board. These are the facts about this thing; and now I am in favor of sitting here and working right on until we get through. Sir, why are we here to-day? Because the press of this State "came down upon us like a thousand of brick" when we proposed to adjourn. That is the reason. Now let us stay like men; let us act like men; let us work like men. How is it in the country to-day? The men are reaping; they are sweating; they are working. They are not going to Long Branch; they are not going to their cottages at the sea-side; but many of the men in Pennsylvania are working hard this very day, harder than we are, and harder than we shall work; a great many of them intellectually and a very great number with their bodies, working more than we shall. For that reason I hope that we shall continue in session.

Mr. TEMPLE. Mr. President: It has been complained here by some of the delegates who reside in the western part of the State that the Philadelphia delegates voted to remove this Convention from Harrisburg to Philadelphia, and have kept them here until now. Then it is complained that the Philadelphia delegation on this floor now desire to adjourn it over until the fall. I desire to say that a majority of the Philadelphia delegation, as I believe, are not in favor of any such proposition, and that they are not in favor of bringing the delegates back here in the fall from the western part of the State; and, further than that, I desire to say that I believe the majority of the Philadelphia delegation upon this floor have no special interest to be derived from another session of the Pennsylvania Legislature which may assemble next winter under the old Constitution. If there are delegates who desire this adjournment over for that purpose, they represent themselves; but, for one, I say they do not speak for me. We are willing, as I am reminded by my colleague from Philadelphia, (Mr. Biddle,) to stay here and perform our duties, as we shall attend to our private business if we leave this Chamber and go back to our respective avocations.

Mr. H. W. SMITH. Mr. President: I have not said a word on this question of adjournment. I shall not say anything now. I only ask that the Convention

take a vote on all these questions of adjournment and then get to work and do business.

The PRESIDENT *pro tem*. The question is on the motion to postpone indefinitely, upon which the yeas and nays have been ordered.

The yeas and nays were required by Mr. Beebe and Mr. Temple, and were as follow:

Y E A S.

Messrs. Achenbach, Ainey, Armstrong, Bailey, (Huntingdon,) Barclay, Bartholomew, Beebe, Biddle, Bigler, Black, Chas. A., Bowman, Boyd, Broomall, Campbell, Carter, Church, Cochran, Corbett, Corson, Cuyler, Dallas, Darlington, De France, Dodd, Edwards, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hay, Hazzard, Hemphill, Howard, Knight, Lawrence, Lear, Lilly, Littleton, MacConnell, MacVeagh, Mann, Metzger, Minor, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Furman, Reed, Andrew, Rooke, Russell, Sharpe, Simpson, Smith, H. G., Struthers, Temple, Van Reed, Walker, Wetherill, J. M., and Wetherill Jno. Price—66.

N A Y S.

Messrs. Alricks, Baily, (Perry,) Baker, Brown, Buckalew, Calvin, Ellis, Ewing, Hanna, Harvey, Hunsicker, Kaine, Landis, Patton, Purviance, Samuel A., Read, John R., Reynolds, Ross, Smith, Henry W., Stanton, White, Harry and Wright—22.

So the resolution was postponed indefinitely.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Bardsley, Black, J. S. Brodhead, Bullitt, Carey, Cassidy, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dunning, Elliott, Fell, Finney, Hall, Heverin, Horton, Lamberton, Long, M'Camant, M'CLean, M'Culloch, M'Murray, Mantor, Newlin, Palmer, G. W., Pughe, Purviance, John N., Runk, Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, President—45.

SUMMER RECESS.

Mr. SHARPE. I offer the following resolution:

Resolved, That when this Convention adjourns to-day it will be to meet on the second Tuesday of September in the city of Philadelphia.

On the question of proceeding to the second reading and consideration of the

resolution, the yeas and nays were required by Mr. Sharpe and Mr. Carter and were as follow, viz :

Y E A S .

Messrs. Ainey, Armstrong, Baker, Bannan, Barclay, Bartholomew, Bowman, Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Curry, Cuyler, Ellis, Green, Hanna, Harvey, Hazzard, Hemphill, Hunsicker, Knight, Lear, MacVeagh, Metzger, Mitchell, Mott, Parsons, Patton, Read, John R., Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Van Reed, Wetherill, J. M., and Wright—40.

N A Y S .

Messrs. Achenbach, Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Biddle, Bigler, Black, C. A., Campbell, Carey, Carter, Church, Cochran, Corbett, Corson, Dallas, Darlington, DeFrance, Dodd, Edwards, Ewing, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Kaine, Landis, Lawrence, Lilly, Littleton, MacConnell, M'CLean, Mann, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Simpson, Struthers, Temple, Walker, Wetherill, Jno. Price, White, Harry and Worrell—55.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks. Andrews, Baer, Bardsley, Black, J. S., Brodhead, Cassidy, Clark, Collins, Craig, Cronmiller, Curtin, Davis, Dunning, Elliott, Fell, Hall, Heverin, Horton, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Minor, Newlin, Pughe, Purviance, John N., Runk, Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—38.

PLACES OF SUMMER SITTINGS.

Mr. H. W. PALMER submitted the following resolution :

Resolved, That after this week the sessions of this Convention will be held in some other place than Philadelphia.

The Convention refused to order the resolution to a second reading.

THE JUDICIAL SYSTEM.

Mr. LITTLETON. I move that the Convention proceed with the consideration of the article on the judiciary.

The motion was agreed to.

The PRESIDENT *pro tem*. When the Convention adjourned yesterday it had

under consideration an amendment proposed by the delegate from Lycoming, (Mr. Armstrong,) to be inserted as a new section after section nineteen. It will be read.

The CLERK read as follows :

SECTION 20. Whenever within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means it shall be the duty of the Attorney General forthwith to apply to the Supreme Court or one of the judges thereof for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to the said judge to be such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear and upon petition be made a party plaintiff or defendant thereto.

The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court in whatever form and in such county as the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that the passage or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within three months, and not thereafter, to a writ of error as in other cases.

No officer of the Commonwealth nor any officer or member of the Legislature shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution, except for perjury therein.

Mr. ARMSTRONG. Mr. President : I desire as briefly as possible to present this question. I am admonished by the manifest impatience of debate which generally prevails that it would not be wise to

detain the Convention by anything like an elaborate discussion.

This subject has been more or less in the minds of members of the Convention. It has been printed and laid on the desks of members, and some of them have doubtless examined it.

The proposition as a constitutional provision is novel, and chiefly so from the difficulty of devising a plan which shall not too greatly interfere with legislative freedom. The necessity for some such provision has long been felt and acknowledged. It has heretofore been held by the courts with great unanimity that whatever may be the fraud which has been perpetrated by or upon the Legislature, or by whatever means of corruption or otherwise an act of Assembly has been procured, when it has once passed the forms of legislation, it is, as held by the courts, to be sacred and cannot be declared to be void by reason of any fraud, bribery or corruption which may have entered into its passage, however outrageous and clear.

The leading case upon this point is *Fletcher vs. Peck*, 6 Cranch, which was decided in the Supreme Court of the United States in 1810. I do not mean to discuss this subject elaborately, but I desire that the true bearings of this celebrated case shall be understood. In 1795 the Legislature of Georgia passed an act by which, in consideration of \$500,000, they transferred five hundred thousand acres of extremely valuable land, lying upon the Mississippi and then belonging to the State, to a company of adventurers. By the terms of this law \$50,000 was to be paid in cash to the treasurer and a mortgage for \$450,000 was to be taken for the balance. It was admitted as clear beyond all dispute that the parties interested in the procurement of the law had executed deeds for portions of the land and laid them upon the desks of the various members of the Legislature willing to take them until, by the most open, flagrant, unblushing fraud they procured the passage of the act referred to. I need not trace its history. The Legislature subsequently repealed the act, with every possible effort on their part to put their seal of condemnation upon it and so far as lay within their power prevent its operation. The question came before the judges of the Supreme Court in the case already cited, and was exhaustively discussed. It was held in substance that the validity of a law cannot be questioned because undue

influence may have been used in obtaining it. However improper it may be, and however severely the offenders may be punished, if guilty of bribery, yet the grossest corruption will not authorize a judicial tribunal to disregard the law."

This decision, whether based upon sound principles or not, and I have often doubted its soundness, has become the rule of decision, and the courts of the various States and of the United States have uniformly accepted this doctrine. It has been so held in Pennsylvania and in the State of New York, and in other States. In short, wherever the question has arisen under the effect of the holding of the court which thus cuts off all possible inquiry into the corrupt modes of legislation it has happened that Legislatures have felt themselves to be wholly beyond the power of the courts or of any power to intercept the operation of fraudulent legislation. Under the impunity guaranteed by the decision to which I have referred, corruption has grown in every State of the Union until it has become the commonest of all things for legislation to be procured by means conspicuously and admittedly corrupt. To such an extent has this pernicious practice grown that the people are fast coming to regard it as inseparable from republican institutions. It is bringing discredit upon our institutions and threatens their perpetuity. The impunity which attends corrupt legislation derives nearly all its strength from the conviction that there are no means by which the guilty perpetrator of the fraud can be deprived of the profits of his corruption. The want of judicial power to investigate and set aside such legislation is a lamentable deficiency in our system. The want of it has promoted the growth of this enormous wrong until our institutions are strained to their utmost extent, for it must be borne in mind that a republican government rests essentially upon the integrity of its law-making power.

Acts of Assembly, public or private, depend upon the judgment and will of the Legislature. If we perpetuate this disastrous impunity to corrupt legislation we unsettle the foundations of our government—we tolerate corruption at its very fountain, and we can have no assurance that our legislation will be wise or such as the public interests require. It will inevitably in the future, as in the past, be largely influenced and in many instances controlled by the particular and corrupt motives brought

to bear upon members of the Legislature. The evil has become enormous, and it is attracting attention in all the States. In Ohio their Convention now in session are considering the subject. What has been their precise action I do not know.

The gentleman from York (Judge Black) told me yesterday that he had a letter from Mr. Charles O'Connor, of New York, calling attention to the subject and stating his conviction that the purity of republican institutions depends largely upon the power of arresting corruption in the Legislature. In our own State we have had numerous instances of it. I will refer to only one. The act approved the nineteenth of June, 1871, entitled "an act relative to legal proceedings by or against corporations" was approved by the Governor and stands to-day as a valid law in the statute books of the State. I do not know whether the bill was passed or not, but I do know that it was alleged that the act was not passed through either house of the Legislature, and I have now before me a letter from a gentleman of high standing and reputation in the State, urging the necessity of a provision like this now proposed, in which he states to me that he has the letters of twenty-two members of the Senate of 1871, who state over their own hands that they did not vote for the act and that it never passed the Senate of the State. The question was submitted to a committee of the Senate of which the gentleman from Indiana (Mr. Harry White) was chairman. That committee, through pressure of other duties, were not able to make an exhaustive examination into the facts, as I am informed; but they did make a report to the Senate, in which they stated that the bill, although approved by the Governor, never passed the Senate. It was openly stated by Senators on the floor that the bill had never passed the Senate, and it was also stated that it had never passed the House, and so far as I know this was not contradicted. Mr. Buckalew and Mr. Purman were both in the Senate at the time. Mr. Buckalew states now, and Mr. Purman also, that it never did pass the Senate.

What was the consequence? An act of Assembly of exceeding great importance is thus foisted upon the statute books, and becomes a law of the State of Pennsylvania, without the vote of either the Senate or the House! Now trace its further history. When this act of Assembly in a litigation which subsequently ensued at

nisi prius in this city was cited by the learned counsel of one of the parties, the opposite party alleged before the court that the act had never been passed. The court, following the lead of Fletcher vs. Peck, and the line of decisions which had shut them up to this inevitable course, held that it was not competent for the court to inquire into the mode of its passage or into the fact whether it had been passed at all. The villainous fraud was under the cover of the broad seal of the Commonwealth, and no power on earth could withdraw it from this protection.

My friend (Mr. Cuyler) suggests that the judge added that it was so salutary that it ought to have passed. Perhaps it was, but the other party to the suit would hold a very different opinion. But you will observe that we are not inquiring into the value of the act itself, but into the mode of its passage; and no matter whether it were or were not a good law, it was a law which should not have been upon the statute books until it had been clearly and honestly passed through the forms of law and with the concurrence of both the Senate and the House.

Mr. FUNCK. Will the gentleman state what the character of that legislation was?

Mr. ARMSTRONG. I have it before me. The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. J. M. WETHERILL. I move that it be continued. ("Go on.")

The PRESIDENT *pro tem*. Is there unanimous consent? There seems to be no objection, and the delegate from Lycoming will proceed.

Mr. ARMSTRONG. I am greatly obliged to the Convention, and will endeavor not to abuse the courtesy they have extended to me. I shall be as brief as possible.

The act of Assembly referred to is entitled "an act relating to legal proceedings by or against corporations" and will be found on page 1360 of the laws of Pennsylvania for the year 1871. I do not think it important now to read the act; but I will send it to the desk and have it read if the gentleman from Lebanon desires; but I presume it is not necessary. It is composed of two sections, and vitally affected important litigations pending between two great railroad corporations of the State. The parties adversely interested in the legislation referred to were the Pennsylvania railroad company, and the Catawissa railroad company, the latter of which desired to establish

the fraud by which the act became a law and by which they alleged their rights were fraudulently and most injuriously affected.

Notwithstanding the earnest and persistent efforts of counsel, the court steadily refused to enter into any inquiry upon the subject. Thus bound by established precedents the court, in the existing state of the law, could afford no relief, and with irresistible conviction forced upon them that the rights of legislation, the rights of private property, and the sovereignty of the people were flagrantly outraged and trampled under foot they proceed to complete the fraud by solemn adjudication upon a law which they knew was an unholy fraud upon every right which courts of justice are established to protect. Shall these things be? Shall we continue to grasp at the shadow and let the substance go? Shall we be told that the sovereignty of the legislative department must not be invaded by judicial inquiry, when it stands to-day debased by frauds like these? Shall the punctilio of respect stand in the way of substantial justice? I have no indiscriminate invective to launch against members of the Legislature. The lack of personal integrity in the members has no doubt been greatly exaggerated, but we are not blind, and we dare not close our eyes to the corrupting influences which every intelligent man knows so largely controls our legislation. Every man on this floor and throughout the Commonwealth, who has closely observed the course of legislation, knows there are now upon our statute books laws, and their name is legion, which never could have been there if the right of investigation had existed even to the limited and cautious extent which this section proposes. The progress of events has brought our State in common with others face to face with this enormous wrong. Could the Supreme Court in 1810 have foreseen the consequences which have grown from the rule they established, I cannot doubt they would have paused long before they would have handed over legislation to stand conspicuous and alone as the only fraud which judicial inquiry cannot reach. By a rule of law as universal as it is necessary and salutary, fraud vitiates everything into which it enters, but legislation. Corrupt decisions are reversed. Corrupt judges are impeached or removed by the Legislature. A corrupt Executive would be impeached or removed. Corrupt elections

are set aside. The sovereignty of the people in its original exercise by election has always been open to judicial inquiry, and elections are reversed without hesitation when it is manifest that fraud has affected its results. Yet, with an inconsistency which is without parallel, we accord to the act of the agent an impunity we deny to the people in the exercise of the highest sovereignty they can exercise. Corrupt legislation and the rights it confers even upon the *particeps criminis* are protected and enforced by every department of the government. This inconsistency is monstrous; this injustice is too grievous to be borne.

Standing then in the presence of a corrupt influence and a corrupt power so enormous as I have indicated, what shall we do? To look to the Legislature for any remedy, even if they have the constitutional power to confer it, which some doubt, is delusive and wholly inadequate. The extraneous influences which procure corrupt legislation would be quite sufficient to prevent the passage of any law which would be efficient to prevent such legislation, or to enquire into it when accomplished. And if by any chance such law were passed it could not long remain. For I do verily believe that nothing we have done or can do will be so great a terror to evil doers as the consciousness that for all these things they shall come to the bar of a court where judgment will be without fear and without favor.

There is necessity that this remedy shall be embodied in the fundamental law. It may well be doubted whether the Legislature under the influences which have heretofore controlled them, and which we cannot wholly exclude, would give any efficient remedy if they could. And certainly it would be always subject to repeal. Without a constitutional provision the line of decisions will follow on, *ad infinitum*, in the direction which it now tends, and these corruptions will be wholly without remedy.

In view of these facts, and I might extend these illustrations indefinitely, some remedial provision is imperatively needed. Besides the procurement of laws which have never passed either branch of the Legislature, it is known that bills which have passed have been surreptitiously abstracted from the file and have not been permitted to go before the Governor at all, put particularly in the last days of the session have been mysteriously lost, mislaid; and thus legislation has been

thwarted in that direction. So, also, bills have been passed and when engrossed for executive approval important words, lines and whole sentences and paragraphs have been omitted. In such cases, if discovery ensues, it is always laid to the mischance of unintentional error, or to omission or mistake. In other instances words and sentences have been substituted or added, by which the purpose and effect of the act have been totally changed. In other instances bills fraudulently procured to be engrossed have been in the hurry incident to final adjournment, fraudulently slipped into the bundle of bills prepared for signature by the speakers of the Senate and the House. I am saying that which men on this floor know to be true. These are but a few of the many devices known to the ingenious manipulators of fraud, by which the will of the people is thwarted under the confident belief, I may say the confident knowledge, that if the law has once assumed authentic form it has passed beyond the power of investigation. Now, in view of these facts, what is the proper remedy?

It is manifest that a law which is upon its face regular is to be taken *prima facie* to be valid. It is also manifest that any unwarrantable suspension of its operation might be, and in some cases would be, injurious to some extent. There should, therefore, be a limit of time beyond which no inquiry into its invalidity by reason of any fraud in its procurement should be permitted.

So also it is clear that an enquiry of this kind ought not to be in the power of parties in merely private litigation. It concerns the credit of a department of the government, and ought not to be brought in question except under such fixed and solemn forms of judicial investigation as will at once clothe the proceedings with the highest dignity, and give assurance that the investigation shall be not only thorough but impartial. An inquiry so important ought not to be collateral but direct, and should be the immediate and only subject under consideration. Again, if it were open to question in merely private litigation it might be under investigation at different times in different courts, and subject to diverse decision. Nor could such objection be obviated, for if the decision were to be final where the jurisdiction first attached, it would be open to collusive action by interested

parties, and tried with intent to establish its validity, and with no power to permit other parties to interplead, who, whatever their interest in the question, might have no interest in the subject matter of the suit. And if such decision were not conclusive, inconsistency of decision would necessarily sometimes occur.

It would follow that the act of Assembly which would be controverted in one county to-day and decided to be void, might in the next decision and in another jurisdiction be held to be valid, and if perchance in the first litigation it were held to be valid, rights might become vested under it and a second decision which would declare it to be void must either unsettle the first with the rights vested under it or be wholly nugatory. The latter I would presume to be the correct holding, for I suppose that under a void law no rights could vest. It would not, therefore, be well to frame the section in a way which would allow the validity of the law upon the grounds designated to be the subject of merely private controversy.

In view of these difficulties it was important in framing the amendment to consider in what manner they could be surmounted to preserve its efficiency without impairing any rights of the citizen.

With this purpose in view, allow me to call the attention of the Convention to the provisions of the section in detail.

The first clause provides that "when-ever within one year after the official publication of any act of Assembly in the pamphlet laws," &c. I have said one year because there must be a time when an act of Assembly, whatever it may be, must have the force and effect of positive law; and if the time be too greatly extended the operation of the law would be too long suspended; six months in my judgment might be sufficient, but of this the Convention will judge. I have said the official publication in the pamphlet laws, because the year might expire before the public would have notice that the act had passed at all. It is therefore made one year after public notice that the act has passed, and this is the more necessary—as under our laws private acts are not published in the pamphlet laws until the enrollment tax is paid.

"It shall be alleged before the Attorney General by affidavit, showing probable cause to believe that any fraud, bribery, or undue means were employed to procure the passage or approval of such law."

The Attorney General is the recognized official head of the law in the State. It is appropriate that the application should be made to him. But it would not do to allow to the Attorney General an unlimited discretion, for if by chance he should himself be interested in any of these widely extended and profitable speculations which in a thousand forms, are so frequently the subject of fraudulent legislation, he would be reluctant to institute the proceeding. Therefore it is provided that when probable cause is shown in the affidavit:

"It shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding."

It was not proper to limit the discretion of the Supreme Court as to the mode of proceeding.

In the first place, I had drawn it "by *scire facias*." Afterwards it occurred to me it would be better to try the case in a feigned issue; but then after all it might happen that a bill in equity would be the very best process. So it resulted that I thought it best to leave it open for the Supreme Court and Attorney General to devise the most efficient mode. It is therefore simply provided that an "appropriate proceeding" shall be had which may be by bill in equity, or by feigned issue, or by *scire facias*, or by whatever mode might under the exigencies of the particular case be deemed most appropriate and efficient.

But then it is provided that the process "shall be ordered of course." But perhaps it would be as well or better that the Supreme Court or the judge applied to should have the right to pass upon the question of probable cause, leaving it in their discretion to withhold process if the grounds alleged appeared to be either frivolous or unfounded.

The party plaintiff shall be the "Commonwealth at the relation of the Attorney General." This is eminently proper. It is a well-known mode of procedure, and benefits the dignity and importance of the case to be tried.

There was more difficulty in designating the defendant. It would not always be easy or possible to designate the party in interest, but it is not of paramount importance under the safeguard provided. The court might raise a party—*pendente lite*—might make a nominal party—or name some officer of the government or Legislature. It is therefore declared that

the defendant shall be "such party as the Supreme Court or the judge who shall grant such issue shall direct." If it were imposed upon the Attorney General to designate the defendant, he might not be able to do so because the whole of the facts might not be sufficiently developed to enable him to determine who ought to be the defendant.

But to afford the fullest opportunity to all persons having any interest in the question to protect their interests, it is further provided that when the process is thus ordered, "the court shall direct publication of the same, and any party in interest may appear and upon petition be made a party plaintiff or defendant thereto." The purpose of this is manifest. If the action is instituted by the Commonwealth at the relation of the Attorney General, he would have no especial and particular interest in ordinary cases to press this investigation with sufficient ardor; but when it is permitted to any party having an interest under the act of Assembly to be made co-plaintiff with him and thus introduce the vigor and force of personal interest, efficient investigation will be insured, at the same time that the power and the process is kept wholly under the control of the Commonwealth as represented by the Attorney General.

But, again, parties in interest have the right to appear as defendants, because, perchance, the charges might be unfounded. It might be that upon proper showing it would appear that the act of Assembly was sufficiently and properly passed, and therefore it is that the parties in interest claiming under an act of Assembly ought to have the right as parties defendant to show, upon proper pleading, that the act of Assembly was properly passed without bribery, fraud or other corrupt means.

Thus providing for the parties who shall first make up the record and the mode of giving notice and bringing other parties in interest before the court, the question next occurs as to the trial. "The said issue shall be tried upon proper pleadings;" that is, pleadings properly adapted to the particular proceeding which may be instituted. It is to be tried "by one of the judges of the Supreme Court." The question is one of extreme importance, involving not only the dignity but the reputation of the Legislature, involving also the validity of the act, and possibly the reputation and the fidel-

ity of the Executive of the State. In such an event the dignity and importance of the question demand that the highest tribunal of the State should supervise the trial. It may be tried "in whatever county the Supreme Court may direct." If the act were such that it affected, advantageously or adversely, the interests of a particular section of the State, there would be a manifest impropriety in trying the cause before a jury of such a county. Local and private interests and prejudices shall be excluded as far as possible. It is therefore left to the discretion of the Supreme Court to say in what county the action shall be tried, trusting to the high tribunal before which the parties must appear for the assurance that the question at issue will be justly, fairly and impartially adjudicated.

Having thus provided for the institution of the proceeding and for the mode of trial, it is next provided that if the court and jury, that is, the jury under the direction of the court, guiding them in their deliberations, as they do in other cases, and under the established forms and principles of law, shall declare that the act of Assembly is void, or if they shall declare that it is a valid law, in either event, the litigation upon that question having been once impartially had and a thorough investigation made, shall be conclusive. The law thus investigated shall stand upon the footing of every other right of the Commonwealth that once adjudicated, the judgment of the court shall be final and conclusive. The question thus raised is important in the highest degree, but it rises no higher than other questions which engage the attention of the court from time to time. The tribunal which passes upon life and liberty and every right of person and of property is surely competent to guard with impartiality, and to decide with justice to all parties in interest any question which such investigation could possibly involve. It seems wholly inconsistent with every principle of sound morality that whilst every other fraud which men can perpetrate shall be brought to the light of truth and justice, this crime against the State, against liberty, against the dearest rights involved in the exercise of government, shall be protected by a sort of high sounding sentimentalism which professes to regard the legislative department of the government as too sacred to be touched even where it reeks with corruption—I confess, sir, I have no

sympathy with such grasping at shadows—such disregard of substance.

But, sir, as we are dealing with an act of Assembly appearing in the pamphlet laws of the State, and liable to mislead those who depend upon the act of Assembly as published, it is further provided that "the Governor shall thereupon issue his proclamation declaring such judgment," so that if the law be found valid the litigation that has ensued respecting it shall be ended by a public proclamation which shall restore confidence to the law. If it be declared null and void, the public proclamation puts all the Commonwealth upon notice that that act is inoperative and void. The proclamation is therefore a proper part of the process to give notice to the people of the judgment of the court.

But the finding of the jury might be wrong in law; there might be error; and hence it is eminently proper that there should be a provision for revision in the Supreme Court. Hence it is provided that "either party shall be entitled within six months, and not thereafter, to a writ of error as in other cases." The writ of error is made a writ of right, because it is eminently just that a question of this magnitude should be passed upon by the highest judicatory of the State. But if the right to a writ of error were unduly extended, it would suspend the operation of this law to a very indefinite period. Six months I thought was quite sufficient. The gentleman from Columbia (Mr. Buckalew) suggests to me that three months would be quite sufficient. I would prefer myself three months, and I had so written it, and struck it out, and put in six in deference to what I supposed might be the view of the Convention; but three months, in my judgment, is ample time for the parties to take a writ of error in such a proceeding if either party feels aggrieved by the decision.

There is another provision of the section to which I call the attention of the Convention. The concluding paragraph of the section provides that—

"No officer of the Commonwealth"—

Which includes of course the Executive and all inferior officers—

—"nor any officer or member of the Legislature shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution unless for perjury therein."

It is desirable that every means of information shall be in the possession of the Commonwealth in this investigation. Not even the Executive himself should be exempt from testifying, nor any member of the Legislature, nor the clerks and officers of the Legislature, by whom it is possible, if not probable, that a very large amount of the corrupt manipulation of the Legislature is conducted. It ought, therefore, to be placed in the Constitution that they shall not be exempt from testifying. Otherwise, we would have an act of Assembly passed, probably the first year, exempting members of the Legislature and officers of the government from giving testimony in such cases. They are sufficiently protected when it is provided that the testimony of any such witness shall not be used against him in any criminal prosecution except for perjury in such case. The effect of this will be that every officer of the Commonwealth, from the Executive down, and every member and officer of either House of the Legislature, will be admonished that there is a power above him to investigate his infidelity to public trust and to open the way to the infliction of the penalties incurred by the breach of his oath of office and of corruption under the Constitution which we have framed. I do not believe that under the operation of this section we would be often called upon to investigate the questions which fall within it. I have an abiding confidence that the very existence of the power would so admonish the Legislature and the Executive that it would be among the surest of the methods by which pure and honest legislation would be secured.

One other thing I desire to notice. It occurred to my mind, as doubtless it will to the minds of many here, that there ought to be some saving of vested rights under an act of Assembly which should subsequently be declared void for the reasons defined. I will state the objections which occurred to me, and I gave it very full consideration. Of course the Convention will not understand me as undertaking to say that the result of my deliberations is necessarily right or as expressing any dogmatic opinions on the question. I am only endeavoring to give the Convention as fairly as I can the result of my investigations and deliberations, and the reasons for the conclusions I have reached. I inserted such a provision originally, but struck it out for this reason: If a saving

clause is inserted saving the vested rights in an individual which may have accrued under the law, you afford the readiest mode of evasion, and instantly when the law is passed it will become the interest of the parties who expect to be benefited by it to so manipulate its operation as to bring in third parties in interest. By this easy and common expedient the whole purpose of the investigation might be defeated. But it would even reach further. The law would be so constructed that it could be thus manipulated, thus putting it in the power of the parties who corruptly procure this act to manipulate it in a way which would create vested rights, and secure indirectly the very thing which this measure is intended to prevent.

But no hardship can come from the omission of such a saving clause. It would seem to be certain that no right could become vested under a *void law*. But be this as it may, the section requires that application for process in the proceeding contemplated shall be made within one year, and I should have no objection to making it six months, and then the provision of the Constitution would stand as public notice to every citizen of the Commonwealth that he can take no right under an act of Assembly which shall become a vested right in less than six months. I believe it is sufficiently guarded, and I know of no vested right which would occur under it which it would be important to protect. The utmost inconvenience that could arise would be the suspension of the operation of a law for six months, and this could be, unless in very exceptional cases, of very little moment, especially as compared with the importance of providing any guarantee which will aid in securing honest legislation. So little is such inconvenience to be regarded that in some of the States no statute is allowed to take effect until six months after its passage. It could not of course apply to any act of Assembly which has already become a law; but as to all future laws such provision in the Constitution would be notice of record to all parties that within six months there is a power to inquire into the validity of the law upon the grounds which are here asserted. In all ordinary cases no such question could arise and parties would take their rights under the act of Assembly without hesitation, knowing that the six months would soon pass away, and that there being no suspicion of unfairness in the act their rights vested would remain intact

and every interest be protected. But where we are attempting to deal with fraudulent and corrupt legislation, grown expert by the experience of years and strong in its confidence of impunity, and to wholly prevent it if possible, it is not going too far to say that for six months such an act thus tainted with suspicion shall stand under notice to the people of the Commonwealth and to all others that within that time investigation may be instituted under which the law may be pronounced to be invalid for the reasons which are set forth.

Sir, the instincts of the people point unerringly to the acts which fall under suspicion of fraudulent procurement. The great body of the law will be received and acted upon with undiminished confidence, but those acts which in the past have so discredited the State, or others like them in the future, could not, under a section like this, pass successfully the ordeal of judicial inquiry before an impartial court and jury. The evils to be remedied are frightful in their enormity, the inconveniences to be incurred, taken in their largest aspect, are inconsiderable and trifling as compared with the results which I believe would flow from this provision.

Entertaining these views, Mr. President, and having given this subject as thoughtful attention as I am capable of bestowing upon it, I have come to the deliberate conviction that this section is right. It may be amended. Far be it from me to suppose that it is not capable of amendment; but, in my judgment, it is a step in the right direction. It protects all interests which ought to be protected. It is an admonition to the Legislature and to the Executive, that any corrupt practice which touches the foundation of the honesty of our legislation shall be open to judicial investigation; and under such a constitutional provision, and with the other safeguards which have been placed around legislation by this Constitution, I believe we shall have done a vast deal towards stemming the tide of corruption which now threatens to destroy the liberties of the people.

MR. CARTER. Mr. President: I shall not attempt to answer in detail the learned and eloquent gentleman from Lycoming (Mr. Armstrong.) I should regard it as the height of presumption for me to attempt to do so in a question appertaining to the judiciary, but the whole amendment strikes me, as a layman, making

only the humblest professions, as being wrong *in toto*; the idea on which it is based is wrong, and incapable of fulfilling the intended end. The object aimed at of course we concede to be good. And I wish merely to present as a layman the objections that strike me to the whole matter.

We have heard much of the glorious uncertainty of the law in the past. It seems to me that this measure would quadruple that uncertainty. A period of a year and a half must elapse before we can tell what is the law and what is not with these contingencies that lie over all legislation. I am opposed to it because I believe that it is impracticable, that it will not be carried out. The gentleman says that it will be resorted to but seldom. Well, sir, I think that is the case, that it will be seldom resorted to or found to be practicable. It does not seem to me that there is any intelligent basis of action for these men to predicate that action upon. The Supreme Court having the organic law to guide them, and the animus, the intent or spirit where the letter might be dubious, have the guide to declare a law unconstitutional, but you set a jury to work at hap-hazard to define motives and other conditions exhibiting fraud. Why, sir, nothing in the world is harder to settle than the motives that actuate men. We all act from mixed motives; we are hardly aware ourselves what is the predominant and chief motive that impels our action in any one case. It looks to me as if there was a perfect sea of uncertainty appertaining to this whole matter in this investigation to determine whether it was fraudulent really or not.

But another fault. Does the gentleman make of no account all the labor of this Convention looking to pure legislation? Does he not believe that with this increased body of men from one hundred to one hundred and fifty or more, that we shall not have purer and better legislation? I do not consider that this provision is really needed. I think that increase was a wise provision. Does the gentleman make no account of our biennial sessions and a Legislature thus elected, which it was claimed would give a higher and abler body of men? Does he make no account of that?

In addition, does the gentleman make no account of that iron-clad oath which was passed here by a majority that really surprised me, of something like thirty, in which legislators are to be sworn when

they leave the office that they have done nothing which was corrupt and fraudulent, and to which penalties are attached? Does the gentleman attach no weight whatever to that? If he does not he differs with the majority of the Convention. I think there is something, if not a full panacea, and that it will be some guard, and that it is something efficient, something practical. The gentleman's sword is not so sharp to divide between the bone and the marrow as that provision. These fraudulent fellows have the reward safe in their pocket, and what do they care for subsequent action without penalty? They do not care a straw whether the law eighteen months afterwards be declared unconstitutional or not. You do not reach any remedy or punish any scoundrelism in that way; so it seems to me, although the law may be declared unconstitutional.

But to revert back to the idea with which I started, I heard a distinguished lawyer, who sits near me, say that he would advise a client very cautiously to beware of any action under a law for the period of eighteen months or a year, there is that uncertainty that hangs over the matter.

But, sir, and more especially to the point, I beg leave to draw attention to what we have done in addition to the iron-clad oath, in addition to the increased period and superior character of our Legislature—in addition to those let me refer to that which directly covers the case. The gentleman spent so much time in showing the case of a law passed without the cognizance of the legislators. This cannot occur under what we have done already. Let me refer to the seventh section of the article on legislation:

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

Then is section eight: "No amendment to bills by one House returned to the other for concurrence shall be concurred in except by the vote of a majority of the members elected to the House to which the amendment so returned, taken by yeas and nays, and the names of those voting for and against recorded upon the

Journal thereof, and reports of committees of conference shall be adopted in either House only by the vote of a majority of the members elected to each House, taken by yeas and nays, and the names of those voting for and against recorded upon the Journals."

Now, I submit that there is a guard to prevent the occurrence of that thing to which the gentleman referred. Further, in section eleven we read:

"No local or special bill shall be passed unless public notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall be at least ninety days prior to the introduction into the Legislature of such bill and in the manner to be provided by law."

Here we also have struck a fatal blow at special legislation, the great cause of all our woe, and although in legislation termed general there may be some special features introduced which may be of an objectionable character, yet I think by the provisions I have read they are guarded against.

I am exceedingly unwilling to occupy the most precious time of this Convention much longer. The gentleman has argued the subject at great length if not convincingly. I shall not attempt to answer him *seriatim*: but these thoughts occur to me as fatal objections to the whole thing. The plan is new. In no Constitution of any State in the United States is any similar provision found. Ohio, I understand, has a law embracing the same idea. If such a law would work well, if it be a good thing, the Legislature can enact and continue it. For that I have the opinion of a legal gentleman sitting not far from me, and why not leave them to do it if it be found necessary, if the other checks we have introduced be found insufficient. I submit that this matter should be disposed of as soon as possible, for I cannot believe it will pass; nor do I believe, inasmuch as it is radically wrong, wrong in its inception, wrong all through, because impracticable and unnecessary, that it may be disposed of as soon as possible and we go through with that part of the work yet remaining in this article.

Mr. HARRY WHITE. I offer the following amendment to the amendment, to take its place:

"Any bill passed in disregard of the provisions and directions prescribed in the

article on legislation for the passage of bills shall be void and of no effect; and when the validity of any law passed by the Legislature is questioned in any court of record it shall be competent for such court to inspect the journal of either House, and if it does not appear thereon that all the forms of legislation in both Houses, as hereinbefore prescribed, have been observed in the passage of such law, the same shall be adjudged by such court to be void."

Mr. President, the chairman of the Committee on the Judiciary has not overstated the importance of this question. If delegates will pause a moment and reflect, they will see that this amendment seeks to clothe the judicial power of this Commonwealth with a supervising authority not only as to the constitutionality of acts, but as to the means used in the passage of our statutory laws.

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

Mr. HARRY WHITE. Certainly.

Mr. SHARPE. Will his substitute cover the case of an act of Assembly passed by fraud or bribery?

Mr. HARRY WHITE. It will not, and I do not wish to place a feature in our Constitution which will allow a jury to investigate that matter. I will explain myself in a word. We all admit that there has been corrupt legislation. That is not the question which is practically before us. The question is, how shall we require the forms of legislation, as carefully prescribed in our amended Constitution, to be regarded by future Legislatures, and what penalty shall we impose for the disregard of those salutary and specific provisions?

Mr. President, since the able opinion of Chief Justice Marshall, in the case of *Fletcher vs. Peck*, no lawyer has doubted that when the Chief Executive of a State certified to the passage of a bill in his approval, that was thereafter the law, and it could only be questioned by the judicial power when in conflict with some provision, either the letter or spirit of the Constitution. We are all familiar with that, and I will not pause to discuss it.

How does the law stand now, however, in our modern experience? In the State of Ohio the Supreme Court has indicated an exceedingly safe rule, and I have their decision on that question in my hands, and I have drawn this amendment predicated on the philosophy of that deci-

sion. I find this provision in the Ohio Constitution:

"Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and on the passage of every bill, in either House, the vote shall be taken by the yeas and nays, and entered upon the journal; and no law shall be passed, in either House, without the concurrence of a majority of all the members elected thereto."

A variety of questions have arisen under that, and the Supreme Court have decided as follows—I read an extract from the opinion of the Supreme Court of Ohio:

"No bill can become a law without receiving the number of votes required by the Constitution; and if it were found by an inspection of the legislative journals, that what purports to be a law upon the statute book was not passed by the requisite number of votes, it might possibly be the duty of the courts to treat it as a nullity. But it does not follow that an act that was passed by a constitutional majority is invalid because, in its consideration, the Assembly did not strictly observe the mode of procedure prescribed by the Constitution. There are provisions in that instrument that are directory in their character, the observance of which by the Assembly is secured by their sense of duty and official oaths, and not by any supervisory power of the courts".—*Fordyce vs. Godman*, 20 Ohio St., 1-17; *Miller vs. State*, 3 Ohio St., 475.

Then again:

"The legislative journals furnish the appropriate evidence on the question whether a bill has been passed by the requisite number of votes. Were it otherwise a bill might become a law without receiving the number of votes required by the Constitution. A single presiding officer might by his signature give the force of law to a bill which the journal of the body over which he presides, and which is kept under the supervision of the whole body, shows not to have been voted for by the constitutional number of members. The plain provisions of the Constitution are not to be thus nullified, and the evidence which it requires to be kept under the supervision of the collective body must control when a question arises as to the due passage of a bill."—*Fordyce vs. Godman*, 20 Ohio St., 1-17, *Scott, J.*:

and see *State vs. Moffatt*, 5 Ohio, 358; 3 Ohio St., 475.

This is the law as declared by the Supreme Court of the State of Ohio. I think we have a provision in our new Constitution which provides, as read by the delegate from Lancaster, (Mr. Carter,) that no bill shall become a law unless it has been voted for by a majority of all the members elected to the Legislature, and no amendment shall be concurred in unless it has been voted for by a majority of all the members of the Legislature. These votes are to be recorded upon the journals kept by the body, and this will hereafter secure the Supreme Court or any other court desiring to investigate the question of whether the requisite number of votes has been recorded in favor of a law or not, an opportunity of going behind the mere formal certificate of the Governor and inspecting the journals of the respective bodies and ascertaining therefrom whether all these forms have been complied with. As correctly read by the delegate from Lancaster, it specially provides in the seventh section of the article on the Legislature:

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

Let us imagine that a year has transpired. The first Legislature assembling under our Constitution has passed a bill, and the certificate that it has passed is given by the Executive, and it is questioned whether a majority of the members elected to either House actually voted for that law. The question is raised in a court by an individual who sees fit to do so, as affecting his rights, if you please, or otherwise. Under these explicit provisions the court can go behind the formal certificate of the Executive and inspect the journals and see whether the requisite number of votes had been recorded in favor of the law.

But I now want to go a little further than that. Out of abundant caution we have provided that "no bill shall be passed containing more than one subject, which shall be clearly expressed in its title except

appropriation bills." And we have also provided that "every bill shall be read at length on three different days in each House," and "that all amendments thereto shall be printed before the final vote is taken." I apprehend that in the connection in which these clauses are, they are merely directory, and if the Legislature see fit to pass a bill without having it previously printed, the court before whom the question of the constitutionality of the law is raised, for want of formality in its passage, could not declare it unconstitutional by reason of the non-observance of these provisions. In the amendment which I have offered, I seek to go behind that and provide that any bill passed in disregard of any of the provisions and directions found in the article on legislation shall be void and of no effect, and authorizing the court in which the question is raised to inspect the journals, and if they discover therefrom that the formalities of legislation have not been observed, to declare that law unconstitutional. This is intended to render imperative these provisions. It is a penal section requiring the observance of the careful directions we have in the article on legislation.

The *PRESIDENT pro tem*. The delegate's time has expired.

MR. MAOVEAGH. Mr. President: I have listened to the gentleman from Indiana very carefully because my mind was not entirely decided upon the amendment offered by the gentleman from Lycoming in some of its provisions, and I have been utterly disappointed in that I did not hear any suggestion from the gentleman from Indiana of any manner of investigating this one great evil, the purchase of laws. Matters such as the gentleman from Lycoming has detailed will occur, I suppose, occasionally. At rare intervals there may be a law put upon the statute books which never was passed. A bill may be passed containing two subjects perhaps. A bill may be passed that has not been read at length or only read two days instead of three; a bill may be passed without the yeas and nays having been called upon it. The speaker may sign it at one desk or at another, but what chaff and nonsense it is to talk to us as if these were the things we wanted to prevent. What we want to do is to follow the bribe giver and the bribe taker into the court of justice and prove that the law that they parade there as a statute, is dead of its rottenness in the

hour of its birth, by the infamous corruption that secured its passage.

The people of this country are not going to ruin because the speaker does not sign the bills in presence of the House, or because a bill is not read three days. If the gentleman from Indiana could have enforced for the last ten years in every legislative body in this country the provisions of which he has this morning spoken, still he would have utterly failed to have arrested the decay of your public spirit and the demoralization of your public life. It is the corrupting use of money in your legislative halls, and not the disregard of directory provisions that is eating out everything that is worthy of preservation in America to-day, in your form of government, and is slowly rotting its way down to destroy your society as well as your politics. If I am arraigned at the bar of the Supreme Court of this State, and a judgment is rendered against me, and it is exhibited anywhere else, I have the right, if I can, to show that you paid the judges for their judgment. Is the casual legislator of the winter or the Senator of even three years, of whom nobody may have heard before he took his seat and never will desire to hear thereafter in some cases, however estimable and worthy may be the good man who sits at his right hand or his left and keeps his hands pure, to pass a law putting insufferable burdens upon me or taking my rights from me, without giving me the privilege to prove in a court of justice that the Legislature was bought to pass this very law? Certainly we ought to have that privilege. I do not suppose it would correct all the fraudulent practices, but I think that the existence of the privilege alone will be a wonderful check against corruption in legislation. I think the knowledge that every officer in your Commonwealth, high and low, may be brought by the imperative mandate of the court and compelled to perjure himself or to destroy his wickedness will be in itself a very great bulwark for pure legislation, and it is this that I seek to secure, some method of taking a corrupt and rotten statute, bought by money, and proving if I can that it was so bought. It will at least make speculation in statutes less profitable. It will at least notify gentlemen before they spend large sums of money in the purchase of a statute that the investment may turn out to be a very poor one in the end, and therefore while I have no objection to vote for

these directory provisions, I want something that will enable me to go to the heart of the evil and to strike at the purchase of legislative bodies.

Mr. S. A. PURVIANCE. As a member of the Judiciary Committee, and as one who gave his consent that the chairman should present some proposition of this kind to the body, and now not being able to coincide in the views of the chairman in reference to the section so presented, I ask the attention of the Convention for a very short time whilst I explain the reasons for my dissent.

I cannot assent to the passage of any such proposition, unless it should be accompanied by a saving of all rights which might accrue under an act up to the time that it might be set aside. But upon full reflection I am satisfied that this is not the proper place for any such provision. The article on legislation would have been the place, and if this section should find a place in any article that is the article in which it should be placed. But this whole subject can be reached by a section like this: "The Legislature shall provide a mode by which a law may be declared invalid on account of bribery and corruption." In these three or four or five sentences in our organic law this power can be conferred upon the Legislature, instead of making here what might be considered a law *in extenso*. Now, how can this proposition as it is, if placed in the organic law, be carried out? Look at it. It is to be by trial. A trial of what? Why, a trial as to whether bribery, or fraud, or corruption has taken place. Is not that alone proper for the Legislature to provide the formula of trial and all the incidents of trial?

I submit to the Convention whether in every case in which bribery has been practiced in the Legislature that is to be set aside. Suppose a case in which there has been a law passed by a majority of thirty or forty members. Suppose that one single man alone in that majority had been bribed. Would you set aside that law? Certainly not. On the other hand, if a law be passed by a majority of one, and that one man was a bribed man, then the law might be set aside. But do you not require a general law to provide all this machinery? Again, suppose a law is secured by the aid or by the solicitation of one person, and that person has obtained the passage of the law by bribery, but the law was passed by a large majority whilst it ought not to be set aside. Yet in refer-

ence to the corrupt man himself who has been guilty in bribery there should be a provision in the law that he should take no benefit under it.

This is not in this provision. It is not here. It would have to be set forth in a general law. I do not know whether there is any saving of rights in the article as drawn by the gentleman, for I have only examined it casually.

Mr. EWING. There is none.

Mr. S. A. PURVIANCE. I am told there is none. Then look at the anomaly that this presents to the consideration of the civilized world. Here is a law passed under the Constitution as we have provided, all requisites complied with, the bill read three several times, that on the final vote the yeas and nays are duly entered upon the Journal, the law carefully examined by the Secretary of the Commonwealth and certified by him to the Governor, and all the formula and all the requisites of the Constitution fully complied with before the Governor approves it. It goes out to the world. Is not that a law; is not that a constitutional law? And, sir, are you to assail that law for any reason whatever, especially if it affects these rights which have grown up under it? Why, sir, I may have purchased a tract of land under that law. It may have been a link in the chain of my title to the tract of land, upon which I have entered and upon which I have made valuable improvements, \$50,000 or \$100,000, and yet it is to be assailed and stricken down, and my property swept from me. Why, sir, I say it is a most dangerous power.

Now, sir, still further. The proceedings are to be set aside for bribery, fraud, and for false pretence. What is a false pretence? A man sits down alongside a member of the House and he is in favor of the passage of a certain measure, and he tells to that member certain things which may operate upon the mind of that member and the judgment of that member, in inducing him to vote for the passage of that law. That very representation might be a false one, but is the law to be set aside on that account? Why, that would be carrying the matter a little too far, a great deal too far. Again, for fraud. What sort of fraud? Should not that be left to the Legislature in a general law to define what the fraud shall be and what the false pretence shall be, what the character of each of these shall be before

they shall be regarded as sufficient to set aside the law?

I am therefore, sir, of the opinion that this section ought to be voted down, and if we have anything of the kind to insert in the Constitution that we should put it in the article on legislation in these brief words: "the Legislature shall provide a mode for rendering a law invalid which has been passed by bribery or corruption."

Mr. HUNSICKER. Mr. President: Yesterday when I made the rash promise that I would make no more speeches upon the article reported by the Committee on the Judiciary I had no idea that within an hour or two a child of such monstrous proportions as this would be produced; and I propose now to state the reasons very briefly why I shall vote against it.

Yesterday the gentleman from Lycoming, with his persuasive eloquence, convinced a majority of this body that the Legislature would always have more wisdom and could always be more safely trusted with all the laws regulating the mere liberty and reputation of the citizen than this Convention could. And he furthermore declared that it was a matter entirely within the control of the Legislature, and with their plastic hands they could mould the remedy to suit the particular exigencies that might arise. He furthermore declared that the Supreme Court would be so overburdened with business affecting the mere questions of character and reputation that there would be a practical denial of justice; and that, therefore, it was the part of wise statesmanship to commit these things to the Legislature; and this morning he comes in with a proposition that every act of Assembly is to remain in obedience for one year; that the whole legislation is to wait; and that the rights of the people of the Commonwealth are to hang trembling in the balance, and then when the case is finally brought by the relation of the Attorney General before a court in some county in the State, after it has dragged its weary length along for one, two, three, four, five, six or seven years in the county where it is tried, then it may be carried up by writ of error to the Supreme Court, because, said he, *it is one of the kind of rights which ought to be protected*—carried up to a court already so overburdened with business, according to the speeches so frequently made by the gentleman from Lycoming, that it is utterly impossible now to get justice according to law.

But he does more than that. He does not even stop there with his loading down and burdening to death these poor over-worked Supreme Court judges, who have so much work that they cannot give an hour to considering a question involving the liberty or reputation of a citizen of this Commonwealth, but he furthermore actually provides that one of these judges shall be detailed to hold the court and decide whether the act of Assembly was passed by fraud, by bribery, or undue means or false pretenses. Is that a saving of time? What becomes of the argument made yesterday against my section, that we would thereby over-burden the Supreme Court so much that it would be a practical denial of justice when you load this weight upon them? Suppose there are three hundred or five hundred acts of Assembly passed in one winter, those five hundred acts of Assembly remain dead-letters upon your statute book until the year has expired, because within the last minute of the last hour of the last day of that year the Attorney General may file an information against every one of those various acts of Assembly, and every one may be hung up for seven or ten years.

He goes further. He provides that every officer of the Legislature shall be compelled to criminate himself, and I would remind him here that there is a provision in the Constitution of this State which will save a man from criminating himself. It is true he tries to evade that by saying the testimony shall not be used against him, but what does all this mean? Why, it means just this: *That now a question of dollars has come up, and just as soon as it comes to a question of dollars the Legislature, which was yesterday so wise, so pure and so upright, into whose hands you could safely at all times and for all time commit the liberty and reputation of the citizens, has in the short revolution of one day become so corrupt that you cannot trust them at all, although you have bound them down in the beginning and at the end, tied them hand and foot by restrictions and restrictions and restrictions, until you need but one more to knock away that traditional grant altogether, and that is to abolish them.*

What is this? Is this legislation or is this organic law? Is this legislation? Will this execute itself? Who is to provide the means for this trial after all? It is to be done by the Legislature, and if they provide none it will be as dead as is your Bill of Rights to-day. I like a little

consistency once in a while. I am not at all an advocate of the maxim that consistency is a jewel, but at the same time I believe that it ought to last at least twenty-four hours, and that is all I ask from any gentleman in this Convention.

For these reasons I shall cheerfully and with savage joy vote against this proposition. [Laughter.]

MR. KAINE. Mr. President: I think this is a very important proposition, and it is entitled to a fair, full and deliberate consideration by the members of this Convention. And I do not think the personal animosity of the gentleman who has just taken his seat in regard to the chairman of this committee ought to be taken into consideration in considering so important a question.

MR. HUNSICKER. That I deny. I have no personal animosity against him or any other gentleman, not even the gentleman from Fayette. [Laughter.]

MR. KAINE. Then he desires to carry this upon the shoulders of that provision of his which was voted down yesterday.

I am very clearly of opinion that some provision of this kind ought to be placed in the Constitution. It has a place in the Constitutions of other States of this Union, and from what we know of the transactions in the Legislature that this is intended to prevent, I think it ought to go into ours.

And first, in regard to the amendment now pending of the gentleman from Indiana. That comes very far short of reaching the case. In truth it amounts to nothing whatever as a remedy against the evils complained of. A case was cited by the gentleman who offered this amendment this morning in regard to an act to be found in the pamphlet laws of 1871, entitled "An act in relation to railroads crossing each other at grade," that, I believe, it was established to the satisfaction of everyone, had never passed at all. I know another case, and I have every reason to believe that what I am about to state is correct, and that it can be proved by a number of witnesses, and it only occurred during the last session of the Legislature; and that was this: A bill was presented in the Senate and passed; it went over to the House for concurrence; it was a private bill; it was placed upon the private calendar of the House; it came up for consideration, and it was defeated, not on a call of the yeas and nays, but upon a *viva voce* vote. It was an exceedingly important bill, although a

private and small one, to a corporation; and notwithstanding that bill was voted down and defeated in the House of Representatives, yet it appeared in ten days after the Legislature had adjourned as an act of Assembly of this Commonwealth, and is now in the statute laws of this State.

How was that done, and how would the amendment of the gentleman from Indiana remedy a thing of that kind? The Journal of the House of Representatives appears all fair and regular; the bill was passed through first, second and third readings, compared and went to the Committee to Compare Bills, signed by the speakers and by the Governor, and yet it was defeated. Through the manipulations of some parties interested some clerk was induced to make the proper figures and the proper memoranda on that bill and on the Journal.

Now, how can a case of that kind be remedied unless we have some provision such as the one proposed by the gentleman from Lycoming? I decline to say anything in regard to the nature of that bill or the parties, because I intend that it shall be investigated hereafter in some shape or other. That is a similar case to the one cited by the gentleman from Lycoming. Everything is right and regular in the bill, the Journals are all right, the memoranda on the bill were all right, the figures were all right. Then it is proposed to send to a court to examine the Journals, and if they did not appear all right then to declare the law null and void. The difficulty is that it does appear all right, that it does appear all regular. In such a case you should be allowed to call upon a member or dozen members of the House of Representatives or the Senate and put them under oath and allow them to swear that such a bill never passed. You should be allowed to bring witnesses who can swear, "I voted against that bill, and I know it was defeated," and can show that it was by the manipulation of others, not members of the Legislature, that these things were procured. If you put a clause of this kind in the Constitution it will prevent at once attempts at things of this kind.

In the new Constitution of the State of West Virginia this provision is contained:

"Wherever the Legislature is expressly prohibited by this Constitution from doing any particular act, and the same shall be done in violation of such prohibition,

it shall be the duty of the courts, upon a proper case presented before them, to declare such act null and void."

That is different, I admit, from the proposition now before the Convention, but it is in the same direction. It is a provision in the Constitution that where an act of Assembly has been improperly passed there shall be a tribunal that will have jurisdiction to investigate the matter, to take testimony, to examine witnesses under oath before a jury, and decide whether that law was passed or not. Can that do any harm?

I understand the amendment of the gentleman from Indiana (Mr. Harry White) to be the twenty-fifth section of the report on legislation. I heard it from the desk and I so understood it. Now, sir, if we are to have anything in the Constitution on this subject let us have it efficient, let us have something that will give us a remedy when we desire it. You may make the time shorter, if you please, and require this proceeding to be in six months or three months, in place of a year. That will be notice, and that will remedy the alarm and the difficulty of the gentleman from Allegheny. Then a man acting under such a bill will not have bought a farm or a house and agreed to put valuable improvements on it and have vested rights that nothing can touch. It is not likely there will be any acts of Assembly passed that would affect the vested rights of the gentleman from Allegheny or anybody else in that way. It is these acts of Assembly that are got through for the benefit of special parties and special corporations, and I submit whether they who have been the cause of this infamy and this wrong should take anything by their motion.

I am opposed to the amendment of the gentleman from Indiana. I understand that the chairman of the committee who offers this section desires to make some alterations, which will relieve at least one objection of the gentleman from Allegheny, and that is, to strike out the words "false pretence" and insert "undue means," to make the second paragraph conform to the first. "Fraud, bribery or undue means" are the words used in the first paragraph, and "undue means" placed in the second paragraph in the place of "false pretence" will make it uniform and better than it is. I understand that the chairman of the committee who offered this section desires to make an amendment of that kind, to make the one pro-

vision conform to the other. I hope that this section, in some shape or other, efficient and perfected, will pass this Convention and become a part of the Constitution of the State.

Mr. ARMSTRONG. I do not wish to prolong the discussion of this question. I desire rather to mingle my sympathies with the gentleman from Montgomery, (Mr. Hunsicker,) who appears before the Convention in an entirely new role. He appears here as chief mourner for an offspring of his which seems to have died a very natural death yesterday.

Mr. HUNSICKER. No; it was strangled.

Mr. ARMSTRONG. It was strangled; I almost expected him to appear with white handkerchief and crape. [Laughter.] It seems a little strange that the gentleman is not willing to confine his private griefs within the bosom of his family, but must obtrude them upon this Convention at a time when we are discussing other and very grave questions. I confess I cannot see what particular relation there is between the defeat of an obnoxious measure yesterday and the argument addressed to the Convention to vote down this proposition because he was defeated yesterday. He may find a logic in it, but I am not able to follow the argument.

Now, Mr. President, this is, as has been frequently said in the debate, a very grave question. I propose to modify the section, by striking out the words "fraud, bribery or undue means," in the third line of the first paragraph, and inserting "bribery, fraud or other corrupt means," and I make the same modification where the same words occur in the second paragraph.

Mr. MANN. Can that amendment be offered now?

Mr. ARMSTRONG. It is a mere modification, which is purely verbal, to which I suppose there will be no objection.

The PRESIDENT *pro tem*. The gentleman from Lycoming is premature in offering the amendment. There is an amendment to an amendment pending, offered by the gentleman from Indiana (Mr. Harry White.)

Mr. ARMSTRONG. I was perfecting the section that I offered.

In regard to the pending amendment of the gentleman from Indiana, I understand him to be in favor of the general purpose of this section, if I correctly gathered his views. I would simply call his attention to the fact that the proposi-

tion he offers was voted down in committee of the whole, not because any person disputed the propriety of such an investigation, but because it was unnecessary. The amendment as offered now is not germane to the very particular matter which is embodied in this section; and I hope that whatever may be its success when offered as an independent measure, it will not be adopted as an amendment to this. I think it ought, for the present at least, to be voted down.

Mr. HARRY WHITE. For the purpose of hastening a vote on the section offered by the delegate from Lycoming, I withdraw my amendment.

The PRESIDENT *pro tem*. The amendment of the delegate from Indiana is withdrawn.

Mr. SHARPE. I move to amend the amendment of the gentleman from Lycoming, by inserting after the word "conclusive," in the second paragraph, the following proviso:

Provided, That rights *bona fide* vested shall not be affected by said judgment.

Mr. ARMSTRONG. I will not object to the amendment. As I stated, it had occurred to me as perhaps not being necessary; but as it will satisfy some gentlemen in whose judgment I have a great deal of confidence, I shall make no objection to it.

Mr. CORBETT. I shall not detain the Convention with any extended remarks on the section offered. I simply desire to say that I am well satisfied with the action of the gentleman from Indiana (Mr. Harry White) in withdrawing his amendment, because that will be the rule applied by the courts to the section on legislation without the aid of any such section as he proposed.

I wish to say, further, as to the proposition of the gentleman from Lycoming (Mr. Armstrong) that I shall vote against it. Legislative power is given to the Legislature of the State. We have provided further for an oath—which I voted against—after they are through, purging them completely of everything that they ought to be clear of. Now, I am asked to vote for a section in the organic law by which their acts, after they have solemnly passed them, are to be submitted to a jury of twelve men who are also simply acting under oath. If I cannot trust sixty or seventy or eighty men, acting in the Legislature under oath, I do not know how I am to trust to a jury to decide on their acts afterwards.

Mr. GIBSON. I should like to ask the gentleman from Clarion whether in the trial of cases of feigned issue the verdict of a jury is conclusive? Does not the judge sit as a chancellor, and must not his conscience be satisfied, so that the verdict of the jury may be reviewed the second time?

Mr. CORBETT. I suppose this to be like every other case; the judgment of the court is to be entered upon it; but what is that? The gentleman certainly knows, as I know, that courts do not always control the verdicts of juries when they differ with them, and if they did it would then be the final verdict of one man. You undertake to put the whole legislative power of the State under a jury, and a jury empanelled in an issue between whom? The parties to the issue. Will all parties interested in that issue appear? And I ask you what better is the verdict of that jury than the act of the Legislature? The Legislature is acting under oath, and under a double oath, according to the action of this Convention, one purging them after they have performed their duties, and you are going to turn this whole thing upon the verdict of a jury. Mr. President, you have practiced in court long enough, much longer than I, and you know that the verdict of a jury is a very uncertain thing. You know the verdict of a jury is not like Caesar's wife, beyond suspicion, in all cases.

I can give my assent to no such proposition as this. I never will consent to it. I shall not travel over all the objections that may be urged against it, but I ask the Convention to pause. What do you propose to do? You propose to allow this remedy to any person who will apply under certain formulas within a year. Then how long is it to be before this trial? It may run two, three, four years. I say to you, Mr. President, that there is a better remedy, a more speedy remedy. If an act is objectionable, if an act is wrong, it can be repealed sooner than it can be set aside by proceedings under this section, and I hope that this Convention will pause before they incorporate into this instrument that is to go to the people of the Commonwealth for their sanction a section like this.

Mr. BULLITT. Mr. President: I did not hear the proceedings, and, therefore, do not know whether it is at this time in order to offer an amendment to the proposed section or not?

The PRESIDENT *pro tem*. The section itself is an amendment. There is an amendment pending to that, and a further amendment is not now in order.

Mr. BULLITT. Mr. President: Then I will indicate the amendment which I will offer as soon as it is in order to do so. The section as proposed appears to me to have certain defects in it; but if remedied, in my judgment it will be very desirable that it should be adopted.

Mr. President, there is no more familiar principle of law than this: That fraud vitiates everything. You are able to go into your courts and set aside any contract, any advantage which may have been procured in any form, where you can show that it is tainted with fraud, or that undue means or false pretences had been used to obtain that advantage. Now, while this principle pervades your whole system of jurisprudence and can be invoked by every individual for the protection of his rights and his defence against wrong, you are practically remediless when you may have a fraud practiced upon the whole people of the Commonwealth by the Legislature. It is enough, sir, that a law stands upon your statute book and is certified under the great seal of the State, to break down every ground of opposition and attack which you may make upon it. Although it may have been conceived in fraud, passed by bribery, and signed by the Governor himself for a consideration paid to him for signing it, you are remediless if it stands upon the statute book and comes with the great seal of the State. It is not enough for gentlemen to say that in the attempt which they have made to throw around the Legislature the guards which they have done, they will protect the people against the passing of acts fraudulently or having acts upon your statute book which have never been passed, or inducing the passage or signing of acts by bribery. Mr. President, it is fair to suppose that just in proportion as this Convention shall be ingenious, shall be skillful, shall be able in throwing these guards around the rights of the people and endeavoring to protect them against the wrongs of the Legislature, just in that proportion you will sharpen the intellects and make more ingenious and more skillful the men who constitute that third house, who have figured so largely in the history of Pennsylvania legislation.

Only last year in a neighboring State a law was put upon the statute book with

every appearance of fairness. It had the seal stamped upon every page of the act; it had the signature of every officer who ought to sign it; it had the signature of the Governor; and yet it was believed by a large mass of the people that that act was never before either House and never was passed by either House; and yet the people who were interested in that subject, and the State itself, were powerless to resist the effect of that law for the reason which has been given by the chairman of this committee. There should be some mode provided by which you can test the validity of an act of the Legislature which has been passed by fraud or by bribery. Tell me what mode can you adopt so efficient as this for reaching the men who may use means to obtain the passage of such a law? When you adopt this feature in your Constitution, if an act is passed by bribery there will be the strongest inducement to the men who are interested and who are to be affected injuriously or prejudicially by the act to go into the courts and endeavor to establish the fraud and establish the fact that it has been passed by bribery. In my judgment it will be the most efficient means which you could adopt to put a stop to that which, if I mistake not, was the chief cause of calling this Convention together.

I believe, Mr. President, that the people of Pennsylvania were induced to bring this Convention together for the purpose, if possible, of putting a stop to that which has been felt to be an evil as wide spread as the confines of your Commonwealth—I mean fraudulent and corrupt legislation. And I trust that you will not separate without throwing around that Legislature so efficient a guard as it seems to me this would be for the purpose of preventing it.

But I have some objections to the section as proposed.

In the first place, it seems to me that it is too broad to say whenever it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that *any fraud, bribery or undue means were employed* to procure the passage or approval of such law, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered of course. Now I suggest to the chairman of the committee that that language is too broad; that it might be held

under such a provision that, although an act had been passed fairly and by a perfectly fair majority, still if some one person had used fraudulent means in connection with the passage of the act, then it would have to be pronounced invalid! I would suggest that these words be stricken out, viz: "any fraud, bribery, or undue means were employed to procure," and that we insert after the word "law" the words "was procured by bribery, fraud, or other corrupt means."

There is then another amendment which I shall offer at the proper time. It does appear to me that it is putting into the Attorney General's hands too much power to allow him to determine the question whether this proceeding should be instituted or not. The provision leaves no discretion or power in the hands of the court to determine whether such a proceeding should be instituted or not.

That is, wherever any private individual shall allege before the Attorney General, upon affidavit, showing probable cause, that an act has been procured by these means, he applies to the court, and it shall be the duty of the court "of course" to issue this process. Now it does seem to me that the citizens or persons interested in the act should have one further guard before this proceeding shall be instituted, and that is—

The PRESIDENT *pro tem.* The gentleman's time has expired. ["Go on."]

Mr. CALVIN. I move that his time be extended. ["Go on. Go on."]

The PRESIDENT *pro tem.* The gentleman will proceed unless objection be made.

Mr. BULLITT. I will read only the words I propose.

Mr. CARTER. I think we had better adhere to the rule. I object.

Mr. LEAR. Mr. President: It has been heretofore supposed that by dividing the government into three departments we had very ample checks upon the misconduct or failure of each. But it seems by the idea which has been presented to this Convention, in the form of this new section, that it is necessary, according to the view of many of the members, to protect these different departments of the government from undue influence, and from fraud and corruption. This Convention, it is very evident, will have to resolve itself into a perpetual session and be a fourth department of the government, to see to the morals and conduct of the people of this State, that they do not go astray

and bear down to the earth the liberties and the rights of the people. We assume to possess the morals, virtue and wisdom, of the State in a pre-eminent degree. Every day of our lives, since we have been an organized body, we have prayed to God, and thanked Him that we are not as other men are, and especially as members of the Legislature are. [Laughter.] Now we propose, here in this Constitutional Convention, to adopt a provision which shall put on trial not only the legislative but the executive department of of this government, for the purpose of ascertaining whether they have been guilty of bribery, fraud or other corruption in the procurement of the passage of an act of Assembly! Why this is a most extraordinary proposition of reform, and an unheard of proceeding, and I do not wonder that the gentleman who proposes it is sensitive on the subject, when the gentleman from Montgomery retorts with some of the arguments that were used against his amendment of the day before, that it was matter of legislation, and thought that these arguments grew out of a particular private grievance of the gentleman who thus opposed this section.

This section, I believe, is not an emanation of the Committee on the Judiciary, but, as suggested by some of the members and reported here by the chairman of that committee, as an independent amendment to come in at this particular place. It proposes a trial, and a trial by jury. A trial for what purpose? A trial of the House of Representatives, and of the Senate, and of the Executive of the State, because you have got to reach them all. What method or mode does the gentleman from Lycoming propose to try the court and the jury that may be called on to try the case which have tried the members of the Legislature and the Governor of the State, to see whether *they* were bribed or corrupted in the verdict of judgment which they shall have rendered? What method will he provide for trying the judiciary of the Commonwealth to see if it is always pure, and whether the judgments of the Supreme Court and the opinions of that bench have been procured by the use of money, by bribery, corruption, undue means or undue influence? We are to try the act of Assembly, and its validity is to depend upon the verdict of a jury. We are to try the validity of the law as to whether the members of the Legislature were "seen," and when a trial of that kind

comes up it will be one of the *causes celebres* of this country, and will equal in the comic papers, if in no other place, the great trial of Bardell against Pickwick, reported in First Pickwick Papers, and the great trial of Jarndyce against Jarndyce, reported in First Bleak House, and the great trial of the Constitutional Convention against Boyd, tried upon one of the islands of the sea a few weeks ago by the members of this Constitutional Convention, with your Honor presiding. [Laughter.] That is a manuscript case not yet reported. I say that this trial will be as comical, as absurd, as extrajudicial, as unheard of as some of the proceedings reported in those cases, and the Sergeant Buzzfuzz who manages the case upon the part of the Commonwealth, whether he comes from Lycoming county or from some one of the adjoining counties, when he argues the corruption of the Legislature before a court and jury, will indulge, I have no doubt, in some of his very highest flights of eloquence.

It is provided in this section that it shall be tried upon proper proceedings and pleadings, and the proper presentation would be, I suppose: "The Commonwealth of Pennsylvania, *ex relatione* Samuel E. Dimmick, Attorney General, *versus*"—against whom? The court shall name a proper defendant. I presume it had better be against the members of the Legislature, and I congratulate the gentleman from Indiana, who is standing before me, that he is no longer a member of the Legislature, though some of his acts may come up for trial within the year. "The Commonwealth of Pennsylvania, *ex relatione* Samuel E. Dimmick, Attorney General, *vs.* the members of the Senate and House of Representatives and the Governor of this State."

Then the proper pleading, I contend, would be upon a bill of indictment, in which, as drawn by the attorney prosecuting the case, it would be alleged that the grand inquest of the Constitutional Convention of the State of Pennsylvania, upon their oaths and affirmations, do present that the Governor and Legislature of Pennsylvania, not having the fear of God before their eyes, but being given

"To ways that are dark,
And to tricks that are vain."

and moved and seduced by the instigations of the devil, on the blank day of blank, at the capital of the State, and within the jurisdiction of this court, did wilfully, maliciously and corruptly ac-

cept, take and receive ten pieces of tissue paper signed with the name of "Spinner," commonly called "greenbacks," of the value of one hundred dollars each, and all of the value of one thousand dollars; ten pieces of gold of the value of ten dollars each, and all of the value of one hundred dollars; five baskets of champagne, of uncertain value, and ten gallons of whisky, of the value of ten votes, to influence them in voting for and passing and approving an act to prevent, &c.; and in consideration thereof they did then and there corruptly pass and approve said act, to the great damage of the people, to the evil example of all others in like case offending, and against the peace and dignity of this Convention, and especially the Judiciary Committee.

The defendants being called up and directed to hold up their right hands, and inquired of whether they are guilty or not guilty, by their attorney would plead the general issue, "*non culpabilis, et de hoc super ponit patriam.*" And if they have a shrewd and skillful attorney, one of the honorable gentlemen of this Convention, he would plead specially "kleptomania," which is a peculiar manifestation of insanity, the symptoms of which are: An "itching palm," communicating to the brain violent felonious impulses, under the influence of which the victim is irresponsible for his acts, and is irrepressibly impelled to seize and hold for his private use all articles of property. This is, or ought to be, a defence to all bribery or theft, as insane homicidal impulses relieve a prisoner from the consequences of the crime of murder.

The PRESIDENT *pro tem.* The gentleman's time has expired.

Mr. LEAR. Then the further recital of the events of the trial cannot be given, the case being now only at issue.

Mr. DARLINGTON. There are some objections which have not been presented to this Convention and which I desire to present to the consideration of its members. The amendment of the gentleman from Lycoming is too broad and embraces too much by far in my judgment to receive the sanction of this body. Under it every public law which may be passed by the Legislature may, at the instance of anybody who may allege that there was undue means used in its passage, be sent for trial to a court and jury. However much I might be willing to agree with those who favor this idea, who declare that no man should take advantage of

what is fraudulent or wrong in the passage or procuring of any legislation in which he was specially interested, I cannot consent to allow a public law which operates upon the whole Commonwealth, and in which every man may be interested and is interested, to be set aside because of the undue means used to procure its passage.

Nothing that I can imagine would be more unjust. Suppose I am interested if you please, to give you an example, in some change in the law of descent, or some change in the tax laws of the Commonwealth, or any other public matter in which every citizen of the Commonwealth is alike interested; and the Legislature should be by me induced, by private solicitation, which I believe has been fulminated against by us, or by the use of improper means if I were so corrupt as to use them; by bribery, if you please, of the number who might constitute a majority, to pass the law. Suppose I were by the use of any of these means to induce the Legislature to pass a law of a public nature, under which every man in the Commonwealth might have vested rights and in which all would be alike interested with myself. Does the Convention mean to say that that law, that public act, which all might approve, should be set aside and held for naught at any time after one year should elapse, by a jury selected at any point where the court trying this case should sit? I am not willing to go that far, and I do not suppose the members of this Convention mean to go that far. A public law must be held to be binding upon us all, and it will not do in the administration of any government to permit to be lightly set aside the seal which is attached to that law by the proper officers, and which assures the public that the Governor has signed it, and his signature assures the public that it has been signed by the speakers of the respective Houses, and which signatures of the speakers assures the public that it has been properly passed by a constitutional majority of both Houses. I say it will never do to allow any court, under any circumstances, to go behind this certificate of the Governor and inquire into the manner in which it was passed. I am speaking now of a public law in which all are interested.

The answer I know will be made, or may be made, or suggested, that legislation may take the shape of public laws although private individuals alone may

be interested. This may be so in the origin of the law, and generally speaking all public laws have their origin in some one's brain. Some man who thinks it would be better that a certain law should be passed convinces the Legislature that it would be better for the whole community that it should be passed.

Now you have prohibited special legislation; and all private legislation, all legislation for individuals or corporations in which they are specially interested becomes impossible. Public laws alone shall be passed by the Legislature, laws affecting all the people alike, laws affecting all classes alike. It will never do to permit them to be questioned when passed through all the constitutional forms, and certified by all the officers whose signatures are required. What assurance have we but this? What can we rely upon but this? Would it ever do then to permit a law that is passed affecting everybody in the Commonwealth to be set aside at the instance of any one Attorney General, any court or any jury? I submit that it would not.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Franklin (Mr. Sharpe.)

The amendment was rejected.

Mr. BULLITT. I propose now to offer the following amendments: To strike out in the third and fourth lines the words "any fraud, bribery or undue means were employed to procure," and to insert in the fourth line, after the word "law," the words "shall procure by bribery, fraud or other corrupt means."

Mr. ARMSTRONG. I hope that amendment will be adopted.

Mr. BULLITT. There is still another amendment which I desire to offer, to strike out the words "of course," in the sixth line, and insert "if there appear to the said court or to the said judge to be such probable cause."

Mr. ARMSTRONG. I think that amendment also should be adopted.

Mr. BULLITT. I now desire that the section as I have proposed to amend it be read.

The CLERK read the amendment as proposed to be amended, as follows:

"Whenever, within one year after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud,

or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to the said judge such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be tried upon proper pleadings by one of the judges of the Supreme Court in whatever county the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that bribery, fraud or false pretenses have been used to procure the passage or approval of the same, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within six months, and not thereafter, to a writ of error as in other cases.

"No officer of the Commonwealth, nor any officer or member of the Legislature, shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution."

The PRESIDENT *pro tem.* The hour of one o'clock having arrived, the Convention takes a recess till three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

The PRESIDENT *pro tem.* The Convention resumes the consideration of the article reported by the Committee on the Judiciary. When the House adjourned the pending question was on the amendment of the gentleman from Philadelphia (Mr. Bullitt) to the amendment of the gentleman from Lycoming (Mr. Armstrong.) The amendment to the amendment will be read.

The CLERK. In the third and fourth lines of the amendment it is proposed to strike out the words, "any fraud, bribery or undue means were employed to pro-

cure," and insert after the word "law," in the fourth line, the words, "was procured by bribery, fraud or other corrupt means;" and in the sixth line to strike out the words "of course" and insert in lieu thereof, "if there appear to the said court or to such judge to be such probable cause," so as to read:

"Whenever, within one year after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General, by affidavit showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause."

MR. CORSON. Mr. President: I believe that if a law be procured or signed by means of any unrighteous proposal, it should be abrogated by the *officio* the first power that can be invoked; it should be expurgated, expurgated, and no record of it left in the statute book of the State.

I am perfectly willing, if the other members of the Convention will agree with me, that we shall proceed to the consideration of the remaining propositions before this Convention without any speeches. I proposed here one of the most important sections, and the one which contains the widest departure from old forms, and which was adopted in committee of the whole and also upon second reading, and I never made a speech in its favor; and that was the section allowing a limited vote in the election of the two judges of the Supreme Court; and I do firmly believe that there is nothing made by all this speech-making. But as others have discussed this question so fully, and my silence may be misinterpreted, I propose in the few moments allotted to me to say to the members who have argued so ardently against this section, and who are the delegates opposed to concluding our labors in this hot season, that if they would submit their amendments in writing and save their breath we would consummate our constitutional efforts inside of ten days; but the very men who say they are unable to sit out the working of this Convention through the warm weather are those who most expend their strength and energies in useless eloquence

and oratory in this Hall. We listened to the numerous speeches this morning, and what did we gain from them? Of course it was proper for the author of this most important reformatory measure to expound it at large, and I was glad that he did explain it, because I knew that it would be opposed; for every new and great reform meets formidable opposition. I was surprised that my colleague, (Mr. Hunsicker,) by whose side I stood in the great reform which he proposed, should oppose this section with so much warmth and unusual feeling, merely because we were defeated yesterday in our struggle to make the bounds of freedom wider yet by shaping a decree to strike the shackles from the poor man in the pursuit of justice.

MR. HUNSICKER. I rise to a personal explanation. The gentleman misrepresents me. He says that I opposed this proposition simply because I was defeated yesterday in the one I offered. I did not. I opposed it because I believed it to be utterly impracticable, and would produce more mischief than the evil it was intended to remedy.

THE PRESIDENT *pro tem*. The pending question is on the amendment to the amendment, proposed by the gentleman from the city (Mr. Bullitt.)

MR. CORSON. I support the amendment proposed by the gentleman from Philadelphia (Mr. Bullitt.) I say that although we were defeated in the proposition which we brought before this Convention which would enable the people of the Commonwealth of Pennsylvania to take their cases into the Supreme Court in every question which involved any one of the inalienable rights of the citizen, yet we are not dismayed, and I shall not cease to be the advocate of progress and reform though I should be voted down every time. This is a substantial reform, because wherever a law has been procured by fraud there should be some tribunal by which that fact can be ascertained, and if fraud can be established the law itself should be forever annulled; and I shall go on, as I have done during my short life, to advocate every measure which I believe to be in the interest of enlarged liberty and political purity, whether success crown my efforts or they end in invariable defeat. Whilst in 1856 I found myself in a political minority, in 1860 we carried the county by a transcendent majority. Every defeat does not destroy an army.

"They never fail who die in a good cause.
The block may soak their gore, their heads may sod-
den in the sun,
Their limbs be strung to city gates or castle walls,
Yet still their spirits walk abroad, and though years
elapse
And others share as dark a doom, they but augment
the deep
And sweeping thoughts which overspread all others,
And conduct the world at last to freedom."

I have listened to many speeches in this Convention from gentlemen who I know when they come to read their own remarks in future years will be ashamed of them. I was surprised at my distinguished friend from Bucks (Mr. Lear) this morning when he attempted, by ridicule, to drive us away from a faithful consideration of this question. Sir, I repeat it, the pending proposition provides not only for a substantial but a much needed reform; it is a step forward; and I trust that when the members of this Convention come to perfect this measure and consider it fully they will adopt it, not exactly in the terms in which it was originally couched, but in the form in which it shall appear when finally perfected and amended.

It has been said on this floor that for a long time after a statute shall have been enacted the people will not know, until some one shall test it, what is the law. Why, sir, of course the enactment will be the law of the land until abrogated by the decision of a court, just as to-day the infamous legislation of our State is the law of the land until repealed or adjudged to be unconstitutional.

But we have established biennial sessions of the Legislature, and we cannot expect that a law can be repealed at least until two years have expired; but when I have read to you the amendments that I propose, you will find that within three months, within one week, after a law shall have been passed by fraud, corruption or mistake, the people of Pennsylvania will have a remedy by which they can test its validity, and if it turns out to have been procured by fraud or false pretenses it can be annulled and wiped out, or restricted in its wicked purpose by the order of a court.

We are not here to adopt everything which is in the old Constitution merely because it is there. We are not here to be cried down by men who pay no attention to the business which is progressing before this Convention; but we are here for a wise and earnest purpose, and to inaugurate and achieve, if possible, certain

permanent reforms demanded by the times in which we live. We all do know that laws have been passed by false representations made to the legislators of the State—and I do not arraign our law-makers as corrupt; but the men who go to the capital to procure improper legislation are to be curbed and shorn of their functions by this section.

The lobby will be there, and they will make false representations as long as their occupation is profitable, and statutes will be forced through by means of these illegitimate influences about which the people can know nothing until after publication in the form of public law.

This is a good section; it ought to be adopted and made a part of our fundamental law; and when it shall have been amended as I have proposed to the chairman of the committee, and I suppose it will be so that it will be expressed as I have it in my hands and shall now read, I believe it a proper measure to be incorporated in the Constitution of our State, to remain there forever. Now I will read the proposition of the gentleman from Lycoming as I think it ought to be remodelled, and as it will be amended before we get through with this discussion.

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General, by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court in whatever form and in such county as the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that the passage

or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive: *Provided*, That rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment; and the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled, within three months and not thereafter, to a writ of error as in other cases.

"No person shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution, except for perjury therein."

Mr. HARRY WHITE. A word, sir, before the final vote is taken on this question. When I had the honor to have the floor this morning I simply explained the effect of the amendment which I then offered and which was the immediate question before the Convention. Subsequent consultation, however, with some of the friends of the amendment satisfied me that it could not prevail, and I was convinced that my duty would be performed by withdrawing the amendment and voting against the proposition offered by the delegate from Lycoming (Mr. Armstrong.)

The delegate who spoke first after me this morning, the gentleman from Dauphin, (Mr. MacVeagh,) found fault with my observations, because they failed to meet the practical evil of which the public complain, to wit, bribery and corruption in the passage of bills through the Legislature. If the amendment which I offered, and which I had the honor to report substantially with the assent of a majority of the Committee on Legislation originally, had any philosophy at all, it was this: There were certain great, prominent, patent evils in the manner and form of the legislation of our State; some of these were haste and recklessness with which bills were passed. From time to time we have read the flippant charge in the newspapers that bills are passed by the Legislature only by their titles; that no committee primarily gives them that deliberative consideration the Legislature of a free State should always require. Indeed, the great want of our legislative assemblies seems to be prudent deliberation. Deliberative consideration is not always wanting, however, in our legislation. I am surprised at the position of

the distinguished delegate from Lycoming since his moderation hitherto toward the Legislature. Heretofore he has refused to utter indiscriminate charges for bribery and corruption. And surprise is natural when he, as chairman of the Judiciary Committee, at this late day in the Convention, offers a proposition so flagrantly invading our representative system of government.

The delegate from Bucks (Mr. Lear) spoke well when he called the attention of the Convention to the fact that the pending proposition was at war with the principles of a republican government. Pass this section and the people in their sovereign capacity will no longer hold their immediate representatives responsible for their official actions. The representative, returning to his constituents, cannot point with confidence to his acts, saying: "Here are the fruits of my labor; these are the laws passed by the legislative body to which you sent me." Another department of the government must first inspect the proceedings before they have the efficacy of law. Sir, the careful provisions you have placed in the legislative article you would promise to be without value. Turn, sir, to the article we have carefully passed, regulating the manner of passing bills, you will find a panacea for that hasty and inconsiderate legislation which, in the language of some gentlemen, has hitherto disgraced the statute books. Let it never be placed in our organic charter that the existence of a law shall depend upon the paid evidence of some interested individual who is opposed to its passage. Stripped of all logic, stripped of all sophistry, that is the naked question now before this Convention. Pass this proposition, there will at once be an end to the independent action of the representatives of the people.

I take up this provision and I read:

"Whenever, within one year"—

I believe it is changed to three months

— "after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General, by affidavit, showing probable cause to believe that any fraud, bribery or undue means" were used to pass a statute, a feigned issue shall be had, a jury trial shall be organized, and if such jury decide that undue means, fraud or bribery have been used in the passage of this law, the action of a co-or-

dinate department of this government is swept from the statute book.

Sir, as a delegate in this Convention I will never give my assent to such a heterodox in our political system, a heterodox of the worst character; and I trust that this Convention will not submit to the sovereign people a proposition which so solemnly and presumptuously invades their prerogative. Undue means! Corruption! Bribery! Fraud! What is it? Who is to interpret it? Is the sanctity of a man's oath nothing? Is the responsibility which the representative immediately owes to his constituents to go for nothing? Is the oath which is registered in heaven to faithfully perform his duty to go for nothing, because of the whim or the caprice, possibly, of a prejudiced jury? I trust we will pause long before we place a provision of this kind in our organic law. Pass this feature, and you say that all our provisions, all the sacred guards which we have been throwing around the manner of passing bills, are for naught; that we have thus far experimented in vain; that we now, in the closing deliberations of this body, have discovered the corrective of all the ills of legislation; a jury of laymen—a jury selected, possibly, from a prejudiced community—will investigate whether fraud, or corruption, or bribery, has passed a bill; some interested lobbyist is to tell his story, and a wise statute may be erased by a partial jury.

Time and again, Mr. President, bills have been passed in the Legislature which should not have been passed, and I had the honor, if you will allow me to refer to it, since it has been alluded to in the debate, to investigate, as chairman of the Senate Judiciary Committee, not exhaustively indeed, the manner in which a certain bill to which reference has been made was passed. We did not make a thorough and exhaustive investigation because of the existence of a certain contested election case, which required the time and attention of that committee in 1872. It was impossible, because of the limited time allowed, to make a final report satisfactory to all parties. It was stated, however, upon the floor of the Senate, in advocacy of the passage of a bill to repeal what is known as the grade law, that twenty Senators in that body had never voted for the bill. The way in which it was passed was this: It was read in manuscript. The committee was discharged summarily, the bill was

placed immediately on its passage, without reading, in the shell of another bill, on which was marked all the forms of legislation. Thus placed, the bill went to the Executive, and without proper and exhaustive examination was signed. It was never considered or discussed in a legislative body.

That was an evil; a deplorable one—a shame upon the legislation of our State. Pass the amended Constitution, pass the features which we have suggested in the article on legislation, and an occurrence of that kind can never take place again. That is the result of passing a bill through three readings upon one day, of passing a bill without referring it to a committee, of passing a bill without requiring it first to be printed. All these things we have provided for, and a repetition of an offence of that kind can never occur in the future.

But, sir, I must hasten on. Acts of Assembly are to be declared void because of fraud and corruption. Who is to pass upon that? What is bribery and corruption? The paying of money or threatening individuals with political influence? Why, sir, I have seen in my brief legislative career representatives of different bodies, Workingmen's Benevolent Associations, if you please, coming from the mining regions and asking for particular legislation to be passed in their interest, and when members, in the exercise of their independent judgment, refused to vote for the bill I have seen representatives of that organization come and threaten them, saying, "we represent seventy-five thousand voters; vote against this bill, and your political future is doomed." I have seen that effectually used as an argument, and men who at one moment refused to vote for the measure surrendered to this denunciation. Is that corruption? Is that kind of influence to be regarded as pure or not? Pass this section, and I submit that influences of that kind will be used and taken into our courts and submitted to juries to affect the validity of statutes.

I submit then, sir, that in view of the uncertain character of this provision, in view of the uncertain kind of corruption, the uncertain kind of undue means referred to here, the uncertainty of what is meant by bribery and corruption, the Convention should refuse to adopt this section, for if you adopt it statutes solemnly passed hereafter cannot possibly have the sanction of law.

Mr. CALVIN. The gentleman who has just taken his seat told us that he withdrew his amendment because he supposed that this section could not pass; and he was therefore willing that a vote should be taken upon it directly. I hope the gentleman is deceived in his calculation with regard to the fate of this section. I am sincerely and earnestly in favor of it, and I do hope that it will pass. It proposes simply to declare that all fraudulent legislation shall be void, and provides a mode of ascertaining the fact whether it is fraudulent or not. Certainly no man on this floor will maintain for a moment that an act of Assembly which was procured by fraud or bribery or corrupt means ought to stand.

Sir, you know, and every lawyer knows, that fraud destroys whatever it touches. Contracts, bonds, mortgages, judgments and decrees of your courts, aye even the great seal of the Commonwealth, that has been alluded to, crumble into dust at the touch of fraud. Fraud, like the angel of death, annihilates everything it touches, and why should it not annihilate an act of the Legislature passed by fraud, bribery and corruption? Is the Legislature to be elevated above all other branches of the government? We are told that the three great branches of the government, the legislative, executive and judicial, are co-ordinate and co-equal. The truth is, however, that the legislative branch is the preponderating and over-mastering branch of the government. It can impeach and remove your Governor; it can impeach and remove your judges; and it claims, and its friends here claim for it, absolute impunity. We have been told by one gentleman here, the gentleman from Indiana, (Mr. Harry White,) that if we attempt to declare those acts which are procured by fraud and bribery null and void, we are overturning our representative system of government; and by another, the gentleman from Bucks, (Mr. Lear,) we are told that we are performing a farce here, and he undertakes to produce before us a farcical and ridiculous trial in which the Legislature is made a defendant. Pray, sir, where is there any thing ridiculous or farcical; or how can it be alleged that we are overturning our representative system by providing means of ascertaining by the Supreme Court and a jury whether what purports to be an act of Assembly was passed by fraud and bribery—or whether it was passed at all—whether it was passed by the

clerks without the assent of either House, as has occurred on more than one occasion. Must the people of this great State submit meekly and without inquiry to every thing wearing the forms of an act of Assembly, whether it be indeed an act of Assembly or not? But another gentleman says, let the next Legislature repeal it. But the fraudulent act may have the form and character of a contract, and then the Constitution of the United States and the decisions of her Supreme Court under it would prevent the repeal.

Now, Mr. President, it is true, as the gentleman from Indiana and the gentleman from Lancaster (Mr. Carter) and several other gentlemen have said, that we have provided many guards against fraudulent, hasty and corrupt legislation. But sir, suppose fraud and villainy should break through your guards, should scale your barriers, and procure the passage of a fraudulent act; pray tell me, shall it be enshrined? Shall it be made sacred, and crowned with impunity?

The Legislature may pass as many idle, silly and unconstitutional laws as they please: but we undertake to say by this provision, that if they pass by corrupt means an act of the Legislature, it shall stand no higher than the judgments and decrees of the courts, tainted by fraud; that it shall not be held as sacred, but shall be null and void.

It is very true that we have provided many guards, and those guards I have no doubt will prevent much legislation such as we have seen in the past. But the case of *Fletcher vs. Peck*—a case which originated in fraud and villainy; a case that was conceived in sin and brought forth in iniquity, and which was, according to the statement of Chief Justice Black, a fraud and a sham from the beginning to the end, (the lawyers on both sides being interested in procuring the same result)—has been a rule of law which has been followed ever since, and it has secured and rendered sacred all acts of the Legislature, however passed.

I submit to this Convention whether it is wise, whether it is statesmanlike, to submit longer to so absurd a decision of the courts? We have been doing all we can to prevent hasty and corrupt legislation; but shall we say by refusing to pass this section that if fraud and villainy shall only succeed—if they shall only break down the guards and mount the barriers we have erected, then they shall meet with impunity? That fraud and villainy,

if successful, shall reap the rewards of their own iniquity? Is it possible that this body will refuse to pass this section and thus proclaim impunity and protection to successful fraud and villainy? It appears to me, Mr. President, that we ought to inscribe in the Constitution the great principle that fraudulent legislation, like all other fraudulent transactions, shall be null and void; and that will do more to purify your legislation than all the guards and all the barriers that you have erected.

Mr. DALLAS. Mr. President: I feel, of course, embarrassed in rising to advocate a section which the gentleman from Indiana (Mr. Harry White) has pronounced heterodox, but I do not know precisely what he means by that. I do not suppose—and I presume the gentleman from Lycoming himself does not suppose—that this section is in every word, as written, perfect. I have had the honor to sit under that gentleman in the Committee on the Judiciary, and I know that if it were possible for any gentleman, by close application and care in preparation of a section upon any subject, to render it perfect in every particular, we might rely for that perfection upon the gentleman from Lycoming.

But, sir, in some of its particulars this section does not meet my approval, and it is evident that all its details are not satisfactory to other delegates. I concur with those gentlemen who deem it to be objectionable that an act of Assembly should be declared to be invalid because one member of the Legislature may have been bribed, when, in fact, it had passed by a considerable majority of honest votes; but that is no objection to the principle of the section. The section may be so amended as to make it mean and express simply that where a statute has been procured by fraud or corruption it shall be void, and not otherwise. In that shape, and in that shape only, I can cheerfully vote for it.

I think it also objectionable that we should make it possible that an act of Assembly may be nullified so as to affect rights vested between the date of its passage and the date at which it might be declared under this section to be invalid. Neither in that, however, is the section necessarily fatally defective. It can be, and I trust will be, amended so that between the day of the passage and the date of the declaration of the invalidity of a law, acts *bona fide* done and rights ac-

quired under the statute shall not be affected. That is but reasonable and fair, because no act of Assembly will ever be declared invalid by corruption unless, first, some party has had sufficient interest to corrupt; and second, some party has an interest to have it invalidated, and it is but fair that, as between such two parties, the same race of diligence should be had that the law commends in other cases, and that any party who desires that a law shall be declared invalid shall take the proper steps to that end so early that he shall not interfere with the vested rights of parties who in the *interim* have, in good faith, acted upon the validity of the statute.

But, sir, with these two amendments, and perhaps some minor ones, what possibly can be the objection to this section? It is said that there can be no necessity for such a section, because we have already surrounded the Legislature with such restrictions that there is but little danger that it will transgress against the people. Mr. President, I hope that this is true. I hope that there is but little necessity for this section; but if there be never so little, it should be passed, and if there be none, there can be no harm in it.

It is not only in its direct effect but in its indirect effect that this section will be peculiarly valuable. I believe it is true that there will probably be but few or no cases under it, and for this reason every legislator, with this section in our Constitution, would be admonished, during every day of his term of service, that every time his hand should open to a bribe he would incur the risk of being brought before a court of the Commonwealth, and there be subject to searching scrutiny into the secret of his corruption. I believe that that fear would greatly tend to purify the legislative bodies of this State; and if this section can effect no other good purpose, yet for that alone we should adopt it.

It is hoped that by an increase in number, and by the care we have taken in many other particulars, the Legislature will be more pure in the future than it has been in the past. But no man believes that an impure or corrupt man may not still creep in; and when he does so, when he has evaded every other precaution, this fear will still hang over him, and keep him to the faithful discharge of his duty, and he will assume a virtue if he has it not.

But the objection is made that this section confounds the different branches of the government. I would think that a serious objection if I believed it well founded. But, sir, the section would do nothing of the kind. Gentlemen cannot forget that there is no act of Legislature which is not subject to revision by the judiciary of the Commonwealth, and not one whose construction does not depend upon the judiciary of the State, and that judiciary has already gone so far as to insert words where necessary, in their view, to the proper construction of the act; and more than that, sir, acts themselves are every day set aside and declared null and void as contrary to the Constitution.

Does anybody, at this late day, need to have the long since exhausted argument reiterated against the position that in so doing the judiciary encroach upon the legislative function? That is an old subject of debate, and was long since disposed of. The acts of the Legislature of the State of Pennsylvania are not its laws if the judiciary of the State pronounce them to be unconstitutional. Now, this section provides simply that new grounds of unconstitutionality shall be created, and that hereafter no act shall be constitutional which is not in harmony with a section of the organic law which shall say that fraud or corruption vitiates even the acts of the Legislature. This is the entire answer to the argument of the gentleman from Bucks, and the latest argument of the gentleman from Indiana on the subject of the division of the powers of government. The judiciary have always had the power to review acts of Assembly on the grounds of constitutionality, and this is but adding one ground for consideration in such review.

It has been further said that it is unsafe to trust this question with a jury; but we will have under this section a new element introduced in determining the question of the constitutionality of an act of Assembly. It will be necessary to examine questions of fact, and parties upon both sides will be entitled to a jury trial, and by a jury can a question of fraud or corruption be best determined. Those are the very questions which, in all private causes, it has always been supposed are especially proper for trial by jury, and it is intended by this section simply to remit those questions to that tribunal.

But, says the gentleman from Indiana, are the oaths of members to go for nothing, and is the vote of the represen-

tative to be overturned by the verdict of a jury? Why, sir, the answer to that is that a vote that is bought—a vote that is corruptly cast—is no vote. He represents no constituency who votes upon a bribe. His constituency is practically disfranchised, and he represents no one but the corrupt gift-giver. He is his representative solely; and instead of voting for a constituency, he merely exercises an agency for a corrupt purpose, and a court and jury should be permitted to set aside his action as in a case where the duties of a private agency are disregarded by the agent, and the interests of his principal sacrificed to a corrupt or fraudulent purpose.

The PRESIDENT *pro tem*. The delegate's time has expired.

MR. BUCKALEW. This is a proposition offered by the gentleman from Lycoming (Mr. Armstrong) that an additional requirement shall be placed in the Constitution regarding acts of Assembly. He proposes that we shall provide that an act of Assembly shall be honestly passed, that it shall not be passed by bribery or by fraud or by any form of corruption; that if the passage of a law be tainted with fraud or corruption, the question may be judicially investigated, and the fact being ascertained, the law shall be pronounced unconstitutional and void. The courts now pronounce, as the gentleman from Philadelphia (Mr. Dallas) has so well argued, any act of Assembly void for unconstitutionality, but not because it has been passed by corrupt influence, for there is no constitutional requirement at present that laws shall be honestly passed.

The only difference that I discover in classifying this proposition with other propositions, covered by the power of the courts to pronounce acts void for want of conformity to the Constitution—the only difference that I can discover in making this classification is that in cases under this amendment the court will call to its assistance a jury in order to ascertain how the fact may be. Ordinarily the elements of judgment for a court appear upon the face of the statute itself as compared with the Constitution. In these cases, as a fact is to be ascertained, the intervention of a jury becomes necessary. Therefore a jury is to be empanelled, who, under the direction of the court, will determine the fact in controversy was or was not the statute passed honestly through the two Houses of the Legisla-

ture and honestly signed by the Governor of the Commonwealth?

I do not see anything very novel, extraordinary or alarming in this proposition. But the question remains, and it is a proper one for consideration: Is it expedient to place such a provision as this in the Constitution? I observe that there is a great difference of opinion among my colleagues on this floor, and for that reason I speak at this time.

These general charges of corruption upon the Legislature, or rather upon a small part of the members, for it is not intended ever to corrupt them all, but only so many as are necessary to constitute a majority to pass a bill—this general cry of legislative corruption is an evil in itself. It may be a necessary evil under some circumstances, but it is unquestionably a great evil; its effect upon the public life of the State and upon the morals of the people of the State is in the highest degree pernicious.

My idea in reference to an evil of this sort is that it shall not be talked about unless the discussion is accompanied with a blow, with something that tends to check or mitigate or destroy the evil. I grant you it is perfectly legitimate, here and now, to discuss this question because we have before us a practical proposition to abate this evil. Ordinarily indiscreet discussion of this subject is pernicious. Discourses of this sort go out over the State, and I have no doubt that they cause many men in different parts of the State to come forward as candidates for the Legislature who otherwise would never think of it. There are plenty of men seeking nominations for seats in the Legislature who are brought forward by these very denunciations of legislative corruption; men who think it would be a good thing to get there themselves and participate in the enjoyment of those favors which, according to the public rumor, the third house distributes to the first and second houses. I am entirely in favor of arming the courts, or a proper court, in this State with power to say that an act of Assembly shall be void, and be pronounced unconstitutional when it is fraudulent. I see no objection to that. As I said before, the only point for discussion is the question of expediency, as to the instrumentality by which to reach our object.

There is one thing material to observe, however, here, in connection with the remarks made by sundry gentlemen, particularly by the member from Indiana,

(Mr. Harry White;) that is, that these regulations which you have provided in the article on legislation do not reach this evil of corruption in the passage of laws. At all events the effect of any of these regulations as a check on corruption must be indirect and but of small account. Corrupt legislation almost invariably, though not always, goes through all the forms required by the Constitution. Corrupt legislation is carefully formed by its authors. They "make clean the outside of the cup and the platter." The corruption and the evil is within and hidden, and the simple question is whether you will arm the judicial power of this State with authority to penetrate beneath the fair outside and detect and repress one of the capital evils of our political system. Well, the Attorney General is to be called upon. Now, there is objection in a case of this kind to allowing anybody in the State who may desire to challenge an act of Assembly to go into a court and call in question the constitutionality of a statute for fraud. That is not to be thought of. Therefore, you have here provided a single hearing of such question, a hearing within a brief time after the act is passed—three or six months—a hearing only upon the information of the Attorney General—a hearing by the highest court of the State or by one of its selected judges—a hearing under all the forms and guarantees even of the common law—trial by jury under the instruction of a court. What additional guarantees can you have that an investigation of this kind will be fair, thorough, intelligent and effectual; yes, and as a gentleman before me reminds me, in case of error from any cause, a prompt hearing by the full bench of the Supreme Court promptly afterwards.

Now, sir, I say here in my place that no citizen of the State, no corporation of the State, no municipality of the State, interested in your laws, can object to this requirement that your laws shall be honestly passed, not merely through constitutional forms, but with the baptismal blessing upon them of that justice which, in the language of Hooker, "constitutes the very foundation of the Eternal Throne."

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. ARMSTRONG. Before the Convention proceeds to vote I desire to have read at the desk the modified form in which I have endeavored to embody the various

valuable suggestions which have been made.

The *PRESIDENT pro tem.* The question now is on the amendment to the amendment.

Mr. ARMSTRONG. I think I have a right to have the proposition read for information in the shape in which I desire to put it.

The *PRESIDENT pro tem.* The original amendment will be read for information in the shape in which the delegate offering it desires it to stand.

The CLERK read as follows:

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court, in whatever form and in such county as the Supreme Court may direct; and if it shall appear to the court and jury upon such trial that the passage or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive: *Provided*, That rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within three months, and not thereafter, to a writ of error as in other cases.

"No officer of the Commonwealth, nor any officer or member of the Legislature shall be exempt from testifying when re-

quired in such case, but the testimony of any such witness shall not be used against him in an criminal prosecution, except for perjury therein."

The *PRESIDENT pro tem.* The pending question is on the amendment of the gentleman from Philadelphia (Mr. Bullitt.)

Mr. ARMSTRONG. Allow me one word of explanation. I have now embodied in this proposal the amendment of the gentleman from Philadelphia (Mr. Bullitt) and also the amendment of the gentleman from Franklin (Mr. Sharpe) and others, and I think it now embodies the united judgment of the Convention, so far as suggestions have been made in amendment of it. If the amendments are voted down, so that we can get to the section, I will then offer this as a substitute.

The *PRESIDENT pro tem.* The question is on the amendment to the amendment.

Mr. ANDREW REED. I do not propose making a speech on this subject. I will not detain the Convention more than a moment, but I have my own views on this matter, and I desire to express them. I am in favor of the section, saving and excepting that I am opposed to that provision which saves vested rights. I do not think there is any necessity whatever for that, and we are only placing in there a means by which the good of the section will be frittered away.

Now, when we put in the Constitution that every act of Assembly within six months must be subject to this revision every person who gets any rights under it has full knowledge of it.

It was but a short time ago, against my conviction, that this body voted that they would have only biennial sessions. I think it was a great mistake; but if we can wait two years to have legislation passed it will not be long to wait for six months more, and then those who get rights under it will know certainly whether they will be affected by this or not. I think it is only weakening it, and I trust that the measure will not be adopted.

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 now is on the amendment of the gentleman from Lycoming.

Mr. ARMSTRONG. Now I move this as a substitute:

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud, or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publication of the same; and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court, in whatever form and in such county as the Supreme Court may direct; and if it shall appear to the court and jury upon such trial that the passage or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive: *Provided*, That rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within three months, and not thereafter, to a writ of error as in other cases.

"No officer of the Commonwealth nor any officer or member of the Legislature shall be exempt from testifying when required in such case; but the testimony of any such witness shall not be used against him in any criminal proceeding, except for perjury therein."

MR. ANDREW REED. I move to amend that by striking out the proviso about vested rights.

MR. HARRY WHITE. I rise to a question of order.

The PRESIDENT *pro tem*. What is the question of order?

MR. HARRY WHITE. The question of order is this: Of course this comes in the shape of an amendment to the original

proposition, and it embodies the amendment offered by the delegate from Franklin, (Mr. Sharpe,) which was voted down this morning. I raise the question of order that, having been voted down, it cannot now be put in in this way.

MR. ARMSTRONG. It is in a new connection.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

MR. ANDREW REED. Does the Chair rule my motion out of order?

The PRESIDENT *pro tem*. There is a motion to amend an amendment pending. Now the delegate proposes further to amend that amendment, which is not in order. The vote must first be taken on the amendment offered by the delegate from Lycoming.

MR. BUCKALEW. Before the vote is taken I desire to suggest to the gentleman from Lycoming, as the votes of some members may depend on this, that he offers his amendment omitting that clause and let that be moved afterwards separately, so that we can get a distinct vote on each.

MR. ARMSTRONG. I will withdraw that, then. There is a great diversity of opinion upon that particular clause.

SEVERAL DELEGATES. Let it be read.

The CLERK. The amendment is modified by leaving out the following clause: "*Provided*, That the rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment."

The PRESIDENT *pro tem*. With the omission of that clause, the amendment of the delegate from Lycoming is now before the Convention.

MR. HARRY WHITE. I thought I raised a question of order that that proviso has already been voted down by the Convention, and the Chair sustained the point of order.

The PRESIDENT *pro tem*. Certainly the Chair sustained the point of order. That portion of the amendment is now withdrawn.

MR. BIDDLE. I should like to know precisely what the Convention is called upon to vote on. I want to know whether interests that have been *bona fide* acquired under an act of Assembly are to be protected or not.

The PRESIDENT *pro tem*. They are not. That clause is left out.

MR. SHARPE. Will it be in order to renew that proviso afterwards?

The PRESIDENT *pro tem.* It will be in order.

Mr. SHARPE. I can never vote for this section unless that proviso is in, because we are now speaking of general laws. This section is directed against general laws, and third parties may *bona fide* acquire vested rights under a general law before this investigation has commenced; and is it to be said that they shall suffer for the rascality of others? I shall never vote for a proposition that would permit that.

Mr. DALLAS. I desire simply to suggest to the gentleman on my right (Mr. Sharpe) that we vote for this proposition, and if then the proviso is not replaced as he desires it, we can vote to reconsider it. I am with him upon that question.

Mr. DARLINGTON. I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. BEEBE. I should like to know what the yeas and nays are called on.

The PRESIDENT *pro tem.* On the amendment to the amendment.

Mr. PURMAN. Let the proposition as it now stands be read for the information of the House.

The CLERK read as follows:

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court or one of the judges thereof for process in an appropriate proceeding which shall be ordered if there appears to the said court, or to such judge, to be such probable cause and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct, shall be defendant, to try the validity of such act of Assembly, whereupon the Court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto."

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court in whatever form and in such county as the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that the

passage or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within three months and not thereafter to a writ or error as in other cases."

"No officer of the Commonwealth, nor any officer or member of the Legislature shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution, except for perjury therein."

Mr. BUCKALEW. I wish to ask a question of the Chair, at the request of gentlemen near me. Gentlemen wish to have it understood that after this vote, it will be in order to move any additional amendment that does not strike this out.

The question being taken by yeas and nays, resulted yeas fifty-two, nays thirty-seven, as follow:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Beebe, Bigler, Black, Charles A., Brodhead, Buckalew, Bullitt, Calvin, Campbell, Church, Corson, Cuyler, Dallas, Ellis, Ewing, Fulton, Gibson, Gilpin, Green, Guthrie, Hay, Hazard, Kaine, MacConnell, MacVeagh, Metzger, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purman, Reed, Andrew, Russell, Sharpe, Smith, Henry W., Stewart, Struthers Temple, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—52.

NAYS.

Messrs. Ainey, Bailly, (Perry,) Bannan, Biddle, Bowman, Boyd, Broomall, Brown, Carter, Cochran, Corbett, Darlington, De France, Edwards, Fell, Funck, Hanna, Harvey, Hemphill, Heverin, Hunsicker, Landis, Lawrence, Lear, Lilly, Mann, Minor, Niles, Patterson, D. W., Purviance, Samuel A., Reynolds, Rooke, Simpson, Stanton, Van Reed, Walker and White, Harry—37.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Carey, Cassidy, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dodd, Dunning, Elliott, Finney, Hall, Horton, Howard,

Knight, Lamberton, Littleton, Long, M'Camant, M'Clean, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purviance, John N., Read, John R., Ross, Runk, Smith, H. G., Smith, Wm. H., Turrell, Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—44.

Mr. SHARPE. I now move to amend the section by inserting as a proviso:

Provided, That rights bona fide vested before proceedings are ordered by the courts shall not be affected by such judgment

Mr. HARRY WHITE. I renew my point of order. The point is that this amendment was voted down this morning.

Mr. BIGLER. That is not a sound point of order. This is offered as a new proposition entirely.

The *PRESIDENT pro tem*. It is offered to the same section.

Mr. BIGLER. But it is quite modified and changed.

The *PRESIDENT pro tem*. It is substantially the same.

Mr. ARMSTRONG. I hope the decision may be withdrawn because there seems to be some understanding that the friends of this proposition should have the right to a vote upon it.

Mr. BIGLER. Allow me one moment, Mr. President. I want to address myself to the delegate from Indiana. This is a great question, and he is aware of the solicitude that has manifested itself throughout the body on this point. It is due to the Convention that we should have an opportunity of voting for or against this proposition; and certainly no question of order ought to be interposed here, and I appeal to him. I do not choose to take an appeal from the decision of the Chair, because I am aware that the President would very gladly have the Convention vote upon this question if he could do so.

The *PRESIDENT pro tem*. Certainly I desire to do so.

Mr. TEMPLE. I move to reconsider the vote on the amendment just taken.

The *PRESIDENT pro tem*. Did the gentleman vote in the affirmative?

Mr. TEMPLE. Yes, sir.

Mr. SHARPE. I move to reconsider the vote just taken on the amendment of the gentleman from Lycoming. I voted in the affirmative.

Mr. BIGLER. I have not yielded the floor, and I do not how it now it passed away from me.

The *PRESIDENT pro tem*. The question is on reconsidering the vote just taken.

Mr. SHARPE. I said a moment ago that I would not vote for this proposition unless the proviso was put in. I did vote for it because I understood the Chair to say that if the proposition was passed the proviso might then be again offered.

Mr. MACVEAGH. I submit that this proposition can be heard now on its merits, and the vote taken, and I trust that will be allowed to be done.

The *PRESIDENT pro tem*. The question is on the motion to reconsider.

Mr. TEMPLE. I withdraw the motion to reconsider.

Mr. BARTHOLOMEW. Then I renew it. There was a distinct understanding that this proviso should be offered.

Mr. DALLAS. I second the motion to reconsider.

Mr. BIGLER. I claim the floor.

The *PRESIDENT pro tem*. The question is not debatable.

Mr. BUCKALEW. I desired to make a motion. Another gentleman after I was recognized by the Chair got up and made a motion.

Mr. BIGLER. I have held the floor all the while and never gave it up.

Mr. BUCKALEW. I want to submit a motion to save the time of the Convention, and that is to suggest that the simple solution of this is to reconsider the vote on the amendment of the gentleman from Franklin.

Mr. MACVEAGH. Yes, reconsider the vote by which the amendment of the gentleman from Franklin (Mr. Sharpe) was lost. That is what I had in my mind.

Mr. BARTHOLOMEW. I second that motion.

The *PRESIDENT pro tem*. That is in order. Who moves to reconsider the vote by which the proviso was lost?

Mr. KATNE. I do.

The *PRESIDENT pro tem*. Who seconds it?

Mr. MACVEAGH. I do.

The *PRESIDENT pro tem*. The question is on reconsidering the vote on the amendment of the gentleman from Franklin (Mr. Sharpe).

Mr. HARRY WHITE. I submit to the Chair that the proposition to which the proviso is now offered is different from the proposition which was before the Convention this morning.

Mr. KATNE. Then, if it is, the point of order falls, and it is in order now to consider this proposition.

The PRESIDENT *pro tem.* The question is on the motion to reconsider the vote on the amendment of the gentleman from Franklin.

The motion to reconsider was agreed to.

Mr. MACVEAGH. That amendment is now before the House.

The PRESIDENT *pro tem.* It is.

Mr. MACVEAGH. I should like to call for a moment's considerate attention of gentlemen to this amendment. I want it to be carefully examined by the House. I do not want the fate of the other proposition to depend upon the fate of this; and all that I desire is that gentlemen shall consider whether the amendment is necessary at all, and whether it does not utterly take the life out of the section.

This Convention has struck many blows at the first and second Houses of the Legislature, but this is the first time it has ever given a blow squarely in the face of the lobby. I do not mean to say that all my colleagues look at it as I do. I know they do not, but I consider this section now adopted the first thing you ever did towards the extirpation of the lobby which buys legislation. If these men are to pass their corrupt laws and simply to sell the interests to somebody else who is a *bona fide* purchaser of the rights conferred by them, it occurs to me that it will be to a very great extent destroying the usefulness of the section, whereas I cannot see the serious danger or detriment in waiting six months before a law goes into effect. Indeed there are advantages in having a law published a certain length of time before it does go into effect. We are in a certain extent in bondage to antiquated maxims. One is that everybody is presumed to know the law, and another is that the law ought to take effect from the moment it is signed by the Governor or passed by a two-thirds majority, before it is printed, before anybody has any idea of regulating his conduct according to it, and I see no serious danger whatever in waiting six months before a law about which any suspicion can arise shall take effect.

More than that, I do not understand at all that rights obtained under the law would be any more destroyed by this judgment at common law than they ought to be. So it is as to rights obtained under a corrupt judgment, or a corrupt decree, or a corrupt deed, and corruption in any other form. You have limited the time to a very short period; you have restricted

it to six months. Why allow these men to make bargain and sale of their corrupt laws in that time? I do not see the necessity of acting upon a law the moment it is passed, and have never seen it. I have always thought that it would be a great deal better to require a law to be published a specified time before it went into operation, for it is an utter fiction to suppose that everybody does know the law. This warns the people. What is there wrong about it? On the other hand, all that you need is that a man shall come in who is not a party to the corruption. Then, it does not seem to me that you get at the evil at all, because you simply change it from the principal to the agent, and that agency it will be impossible to trace.

Mr. S. A. PURVIANCE. Allow me to ask the gentleman a question. Why not then say that all laws passed shall not take effect for six months after their passage? Would not that meet the difficulty?

Mr. MACVEAGH. I think not in many cases. There are many laws which are perfectly proper which concern public matters, and have nothing whatever to do with private business and about which nobody has any doubt as to corruption, or as to the consequences; but this class of laws which the lobby passes for profit and by the purchase of the legislative department ought not to be made valid and binding upon everybody if an innocent purchaser chooses to step in and acquire rights under them. I do not care who holds the right, to tell me that a man may get a law to take my right from me by buying it and then by parting with his interest under it or by a third party coming in and taking it, he is to be protected, seems to me to a certain extent wrong.

Mr. BUCKALEW. Take the case of charters.

Mr. MACVEAGH. Yes, sir. So he would not be harmed there. He could recover back the consideration paid. He would therefore not be injured. I beg the men who voted for this section to stand by it in its strength. I was at first very much disposed to think this was an indispensable amendment; but on a little reflection I was satisfied that it was not so. Perhaps I am mistaken.

Mr. BOYD. Will the gentleman allow me to satisfy him in a moment?

Mr. MACVEAGH. I shall be very glad to do so.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. MACVEAGH. I am sorry not to have time to answer the question.

Mr. MACCONNELL. I only want to say a word on this question.

It seems to me that this is a very valuable provision. I should be willing to take it with the amendment of the gentleman from Franklin, but I think it better without it. When we pass it in the shape it is we put it precisely on the same footing that contracts in regard to the sale of land rest upon. I sell a piece of land to one of my neighbors, get the money for it. He may put his deed into his pocket and not record it for six months. In the mean time I may sell it to another neighbor, get the money for it, be buying in perfectly good faith; and yet if the neighbor that I sell to first on the last day of the six months records his deed he cuts out the second purchaser.

That is just the case here. You permit a man to take his risk for six months, just as you do the purchaser in the case I stated. Every purchaser of real estate has to take the chance that the man he buys of has not sold in the last six months, and the deed not recorded. Now, it does seem to me that that is not fair to propose to insert here. We all know that this matter of corruption in regard to the passage of acts of the Legislature is the greatest evil and the greatest injury that we are trying to arrest. The thing, above all others, that we were sent here for was to try to remedy, and it seems to me this is the only direct blow that we have struck in that direction.

I hope that the section will be passed as it stands now. Still I would be willing to take it with the amendment of the gentleman from Franklin.

Mr. BOYD. I shall not detain the Convention more than three or four minutes. If I comprehend this section no act of Assembly hereafter passed can be relied upon as a law until the expiration of six months after its approval by the Governor. Now, then, the State of Pennsylvania has in the recent past encountered exigencies that required her to borrow money and organize troops. When she authorizes a loan for such an exigency nobody will feel safe in taking that loan until the six months are up, because it may be that some bad men will make an oath and go before a proper tribunal to try the validity of the act, and the consequence may be in a case of that kind that our

State would be crippled in a negotiation of that kind for a period of six months. We have seen the time when men enough could be found in this State to do that. A crisis overtakes the country, a panic pervades throughout the Commonwealth. The Legislature is driven to the necessity of passing a stay law. Can any man have the benefit of that law if any one man will come forward and make an affidavit that it has been procured by corrupt means or undue influence? The very moment that that oath is made and the proceedings are inaugurated it paralyzes the utility and beneficial effects of such a law as that.

And so any other law of public importance can be thus impeached, and until it is tried in a court of justice, which we all know takes time; and then it is reviewable in the Supreme Court, which takes further time; and a year or two can be consumed before you can ascertain whether this law is valid or not.

Now, are you prepared to go that length? I apprehend not, notwithstanding the vote that has been taken. But if you adopt the provision suggested by my intelligent friend from Franklin, the machinery of such a law can be going on until it is impeached, and the money borrowed under it for the State or any other purpose for which the act has been passed; the *bona fide* persons taking bonds or acting under such law will be protected until the impeachment has been inaugurated, and until it has been established; but if you are going to leave it without this shield in it, it seems to me you may as well say that no law shall take effect until six months after its passage, and if you do that you only tie the hands of the Commonwealth in her appropriation bills and in other matters when she needs legislation or needs what I have pointed out, as well as the citizens interested throughout the State.

I cannot believe that the Convention has had through this hot weather such softening of the brain as to go the length that is proposed by the section as it stands. I am opposed to the section, but if we are to have it, let us have it with the amendment of the gentleman from Franklin in it, so that it shall be a living thing and can be lived under and acted under until it is actually impeached, and if it should be questioned afterwards, and should be impeached and set aside, all that has been done *bona fide* shall stand; and I trust that my friend will not be coaxed, or ca-

joled, or even scared or frightened out of pressing his amendment.

Mr. SHARPE. Mr. President: The remarks of the eloquent member from Dauphin would have been entirely appropriate if the Legislature in the future was to have the power to pass special laws. Then I agree with him exactly that so far as those special acts are concerned, every man ought to keep his hands off for six months, and that this section as it now stands would be perfectly good. But the gentleman seems to forget that we have struck down with paralysis all special legislation.

Mr. MACVEAGH. Will the gentleman allow a question? Is not the gentleman aware that for several years past the specially iniquitous, corrupt and rotten legislation has been in the form of general and not of special laws?

Mr. SHARPE. I do not think so, though there are some cases of that kind. But this section, if it have any value at all, is directed against the general legislation of the Commonwealth. That general legislation is not confined at all to the creation of corporations by general laws or to that sort of legislation; but I remember very well when I was in the Legislature that there was an effort made to repeal the rule in Shelley's case to meet a special emergency. Now suppose that the Legislature should be induced to pass a law of that kind to meet a particular case, through corrupt influence, and it was put upon the statute book as a general law, and rights became vested under that sort of legislation *bona fide*, are parties who are in ignorance of the iniquity by which that legislation has been secured to be deprived of their right?

I say that general legislation covers every branch of the public interests, and you cannot tell to what extent corruption may enter into the passage of general legislation. Who is to know among the citizens of Pennsylvania what corrupt influences are at work at Harrisburg; and and if they, under a general law perfectly fair and right on its face, invest their money and it turns out afterwards that that law, specious, and proper, and general, and appropriate apparently in the interest of people of the Commonwealth, has been passed by corruption or undue means, will the gentleman from Dauphin say that there should not be a saving clause put into this section whereby the rights of third parties shall be protected who have acquired those rights *bona fide*

for a valuable consideration and in ignorance of the corrupt proceedings by which the Legislature was influenced?

Why, sir, if this section goes forth and is sanctioned by the people as it now stands, it will virtually make every act of the Legislature take effect only after the lapse of six months, and therefore I say that it is wrong in principle, and it is only by putting in this saving clause which protects the *bona fide* rights of third parties that we can get rid of that difficulty.

No intelligent lawyer, no lawyer who understands the interests of his client, will undertake to advise him inside of six months that he can do any act under any general law of this Commonwealth, because he cannot tell, nobody but the parties interested in it and the Eye that searcheth all hearts can tell, what corrupt means have been used to procure that legislation.

For that reason I believe that this proviso is eminently proper, and that it ought to be introduced, in order to obviate the difficulty that has been suggested by the gentleman from Montgomery, (Mr. Boyd,) that if this section stands as it now is we shall have no statute operative until after the expiration of six months.

Mr. COCHRAN. I confess that I am very much embarrassed by the present condition of this question. I understood, in the first place, that the amendment now pending was offered to the original section that was presented by the gentleman from Lycoming (Mr. Armstrong.) The amendment was then voted down. After that the gentleman from Lycoming moved an amendment as a substitute for his original amendment and that was adopted, and now we have reconsidered the vote on the rejection of the amendment offered by the gentleman from Franklin, (Mr. Sharpe,) which was offered to the original section. Now, suppose it is passed where is it to go? It cannot go into this new section, because it was not offered as an amendment to that, but was offered as an amendment to the original section. The original section has been stricken out, has been superceded by this, and I do not know, for my part, exactly where this amendment is to go in when it is adopted under the present position of the question. Perhaps I am wrong, but that is the difficulty which I have.

I have voted against the section, and I presume I shall vote against it to the close, although I admit there are very strong considerations presented in favor of its passage.

But it seems to me that the operation and effect of the section are going to be very peculiar, and I think very dangerous. We have had every year passed in this Commonwealth a general appropriation bill. I admit that that bill is cut down under the article in regard to legislation to comparatively few particulars. But suppose it to be alleged by some person in regard to that bill as it remains, that a part of it was introduced by fraud or corrupt means, then you put the operation of that bill under this section, and you stop the wheels of the government, if that allegation is correct. The general appropriation bill itself would, under these circumstances, be suspended, and for six months the appropriations for the government would be unavailable for its support.

Mr. HAZZARD. I will not say at the outset that I am not going to speak on the subject, because I have risen for the purpose of speaking. I will not say that I am going to make a speech, but I do promise that it shall not be very long provided the delegates will give me their attention.

I am in favor of this section. There are three branches of our government, the Legislature, the Judiciary, and the Executive. Now the Constitution and laws ought to be so that they can work together harmoniously. Heretofore the Supreme Court could say to one department, "you are unconstitutional in the laws you pass." They can say so yet; they can expound what does not seem to be plain and tell us what was the meaning of the Legislature. But we have found that laws appear on our statute books where the functions of the Supreme Court are stopped and cannot be exercised, for here is a law that has not been passed by the Legislature. If it is unconstitutional it may be so decided; but the Supreme Court tell us that they cannot go back on the signature of the Governor.

Now, ought we not to provide for a contingency of that sort. It is not only unconstitutional because not passed by the law-making power, but it is fraudulent and infamous and wrong; and still the judiciary cannot exercise their functions by expounding it or declaring it void. Let us contrive some way by which alleg-

ed laws, when contrived by the clerks and filed in the departments and signed by the Governor and printed in the pamphlet laws that are void and unconstitutional because never passed, may be in some way reviewed. I think we ought to do that, and for that reason I shall vote for this section.

Mr. BROOMALL. I simply desire to say that I think this amendment is of little use, except to mislead. There can be no vested rights under a void law. If the law is void, it is void from the beginning, and there can be no rights of any kind under it. Suppose we were to declare that vested rights should not be disturbed by a judgment of a court where the law under which they were supposed to be vested was unconstitutional, would not such a declaration be a nullity? It is as much a nullity in this case as in that. I think the amendment is calculated only to mislead, and I shall therefore vote against it.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin (Mr. Sharpe) to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the gentleman from Lycoming as amended.

Mr. TEMPLE. I voted for the section. I move to reconsider the vote adopting it. I never should have voted for it without this.

The PRESIDENT *pro tem*. Who seconds the motion to reconsider? The motion to reconsider does not appear to be seconded.

Mr. TEMPLE. I withdraw it.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Lycoming as amended.

Mr. MANN. When this proposition was first read to the Convention, I felt very much inclined to support it; but the longer it has been discussed, the more its advocates have said in favor of it, the more I feel inclined to go against it, for there has been no case stated by the gentleman from Fayette or the gentleman from Lycoming, or any other, of improper legislation that would not be defeated by the article on legislation which we have already adopted, and I maintain that the safeguards which we have thrown around the Legislature by that article will protect the people of Pennsylvania from the im-

proper legislation that has been complained of.

In this connection I desire to say that I was astonished at the statement which the gentleman from Columbia (Mr. Buckalew) made, that the people who desire improper legislation are careful to go through all the forms of legislation. My experience is that objectionable bills seldom go through the forms required by the existing Constitution and the rules of the two Houses. The general history of every improper bill that is passed, so far as my judgment and knowledge go, is this: Some member who is not supposed to have any connection with the lobby, to whom there is no suspicion attached, rises in his place and moves a suspension of the rules for the purpose of introducing a bill, and nobody having any suspicion that anything is wrong, the rules are suspended and the bill is introduced before the majority know what is coming. It does not go to a committee, it is not printed; it does not go through the forms of legislation, and it is usually passed to third reading on the first day in which it is read; it is sprung upon the House without any suspicion of any improper influence about it. Send such bill to a committee so that it can be examined, and the honest men upon the committee can give warning to the honest men of the House, and it would never go through the Legislature. In my judgment, there never was an improper bill passed through the Legislature that could have gone through under the provisions we have adopted in the article on legislation. As a matter of fact, I know that men desiring improper legislation, so far as I have had connection with the Legislature, did not go through the forms of legislation. On the contrary they invariably avoided them. They would take a night session, when members were off their guard, and spring on the House an obnoxious bill and get it before the body before they knew what was coming. It was not printed; nobody could tell its provisions, and frequently it was rushed through without a majority knowing what it was. Now, no such transactions can possibly occur under the article on legislation as we have adopted it.

But I do not apprehend that the delegates are now in a state of mind to listen candidly to the discussion of this question, and I will therefore not attempt it any further than to express my dissent to the

statement of the gentleman from Columbia.

I wish also to express my dissent from the statement just made by the gentleman from Dauphin, (Mr. MacVeagh,) that lately corrupt influences have been used to pass *general* bills. Sir, I believe I understand the influences that have been brought to bear upon the passage of every general bill for the last eight years, and I challenge any man to point to more than one bill passed during that time of a general character that was passed by improper influences. I do not believe there has been more than one bill passed during that time, of a general character, by improper influences. I may be mistaken, but that is my conviction, and I desired to express it so that if this strange proposition is to go through it shall go through upon its merits, and not under a misapprehension of the history of legislation in Pennsylvania for the last eight years.

I say it is a somewhat singular proposition, and the more it is examined, I do believe the more the candid and reflecting minds of this Convention will be opposed to it. Why, sir, it sets one branch of the government to try the action of another, and it seems to me if it ought to pass there should be an amendment attached to it providing that the Legislature, if complaint is made to them that a decision of the Supreme Court has been obtained by corrupt influences, shall try the question whether there has been fraud in obtaining a decision of the Supreme Court. I cannot understand why the Legislature should not as properly try whether the Supreme Court has been bribed as that the Supreme Court shall try whether the Legislature has been bribed.

MR. NILES. Or the jury.

MR. MANN. Or the jury. Why shall we say that one branch of the government of Pennsylvania, or two of them, are to be subjected to the suspicion of fraud and tried by a third? I believe that this is a revolution of the principles on which this government is founded, and it will destroy the equality of the branches of government utterly and entirely if it is passed.

I content myself with simply presenting this opinion and entering my protest against its passage.

MR. BIDDLE. Mr. President: I do not intend to re-discuss the whole question; it would be entirely unfair to the House;

but I want to call attention to a single view on this subject. You have provided by the section as it stands, striking out everything in regard to vested rights, by voting down the amendment of the gentleman from Franklin, that a writ of error may be taken within three months. You do not provide that it shall be heard instantly; but I will take the more favorable view; I will suppose that the Supreme Court is compelled in some way to hear the case instantly. It is by no means impossible, it is extremely likely, from the way in which this section is framed, that they may rule the case, not on its merits but on a point of evidence, either on the reception or improper rejection of evidence. The case, of course, must then go down for another trial, and it may come up and go down a second time. Every lawyer on this floor knows that that is not an unusual thing.

Now, how long are you going to keep an act of Assembly in obedience? This may be one of the most important items of an appropriation bill; it may be, as was put with great force by the gentleman from Montgomery, (Mr. Boyd,) a stay law in which the interests of every man in the Commonwealth that has got anything to lose may be involved. Are you going to keep for eighteen months or two years an act of Assembly, passed to relieve the community, in a state of obedience? Just look at it. With the clause in regard to vested interests struck out, look at it. In the view that the gentleman from Delaware takes, perhaps they are struck out anyhow; but what sort of legislation are you going to have? It seems to me the more you turn this subject over, the more improper the passage of any section like this appears. I do hope, therefore, on the final vote gentlemen who have heretofore given it their support, will change their votes and vote against the section.

Mr. ALRICKS. Mr. President: I have not spoken on this subject, and I should not speak now if it were not for the remarks of the distinguished gentleman from Philadelphia (Mr. Biddle.) This Convention is to act according to the rules, I suppose, of common sense and of law, and we are never to suppose that *improbabilities* will occur; we are never to suppose for one moment that any act in relation to the public appropriations or any general law of any great importance will be procured by fraud. We have no right to presume such a thing.

It is totally improbable. The probabilities are entirely the other way. It is only a few statutes in which certain individuals are interested that are ever likely to be procured by fraud.

The section meets my unqualified approbation. I appeal to every lawyer on the floor of this House whether the records of a court do not import verity. I believe it to be a principle of law that the record of a court imports verity. But suppose a record of a court has been procured by fraud, have the parties no remedy? I appeal to every lawyer in this House that upon a writ of *coram nobis* or of *coram vobis* the court will examine that record, and if there is a fraud in it they will correct it, and they will correct it on parole evidence. I speak, sir, of what I do know to be the fact.

Now, I want to know if it is not perfectly right if an act of the Legislature has been procured by fraud that there should be some tribunal before which that question can be tried. The gentleman from Potter has told us that you might as well have a tribunal to examine the judge. You have one. We have provided for it. If a judge is guilty of fraud the Legislature may impeach him. The judicial, the legislative and the executive branches of the government all must have a place to be tried. The judicial and the executive are tried by the Legislature, but where are the legislators themselves to be tried? The gentlemen open their eyes in holy horror—

Mr. CORBETT. Would the impeachment set aside the judgment?

Mr. ALRICKS. No, the impeachment would not set aside the judgment; but if judgment is fraudulently entered, a writ of *coram vobis* will reach it and correct it. That is what I say. You present your petition to the court and say that one of the members of that court has been guilty of fraud, and you will find, if this be the fact as presented to the consideration of the court, they will correct it just as they would do if that fraud was committed by a member of the bar.

Now, I apprehend that after all we are establishing no new principle. We are merely saying that there shall be some tribunal before which this question may be tried. I know, we all know, that it may produce inconvenience. Let me state you a case. You suppose that a man who holds his farm or his house with a good title ought not to be disturbed. A gentleman told me that he had a tract of

land in this State for which he was offered \$80,000, and an action of ejectment was brought. It was all a sham. The plaintiff had no title. He (the defendant) said he went to the town in which the ejectment was brought with a view of settling it, and the first gentleman he met was the lawyer who brought the suit. The lawyer invited him to his house and he (the defendant) stayed over night. He would willingly have paid to have the matter settled, but he was afraid to mention it. Afterwards, when the case was reached on trial, a non-suit was taken. He then met the lawyer who said to him, "why did you not give me ten dollars and I would have settled that case?" He (the defendant) replied, "I went to your house to give you five hundred dollars, but I was afraid to make the proposition."

The same wrong may be repeated daily, but nobody would for that reason think of abolishing the action of ejectment; because inconveniences may occur that is no reason why a certain rule should not be adopted. I apprehend that we are just establishing what ought long since to have been established; that is, a tribunal which will test the question and if fraud has been perpetrated, that the act of Assembly shall be set aside. I should be sorry to have our pamphlet laws filled with *spurious* enactments. Why, sir, I am told that we have now in our pamphlet laws a statute that never received the signature of the Governor. The broad seal of the State covers everything. Are these wrongs to be perpetrated in open day without remedy? If such is the case we might as well dismiss this Convention and close our courts. I trust, therefore, that the Convention will stand by their action, and that this section will receive the same vote that it did when it was voted upon before. "Every wrong has a remedy," is a legal maxim; in this case it devolves on us to provide the remedy, and we have it in this new section.

Mr. ARMSTRONG. Mr. President—

The PRESIDENT *pro tem*. The delegate from Lycoming has certainly spoken on this subject before.

Mr. ARMSTRONG. I think not on this question.

The PRESIDENT *pro tem*. Unless the Convention unanimously agree to it, he cannot proceed.

Mr. LILLY and others. I object.

Mr. ARMSTRONG. I do not think I have spoken on this question.

Mr. KAINE and Mr. WORRELL. Not at all.

Mr. CORBETT. The same rule must be applied to others if the gentleman is allowed to proceed.

Mr. ARMSTRONG. I have not spoken, to my recollection, on this question.

The PRESIDENT *pro tem*. The gentleman says he has not spoken on the question, and he will therefore be allowed to proceed.

Mr. ARMSTRONG. Mr. President: I do not mean to weary the House with an argument, but I desire to call a few points to their attention by way of suggestion.

It is a maxim of the law that fraud vitiates everything. The exception we make, and which has been made under the rulings in the case of *Fletcher vs. Peck*, has been that the courts will not inquire into corruption of the Legislature. I cannot but believe that it was an evenly-balanced question at that time. The question in that case arose collaterally, and it was not therefore incumbent on the court to determine it. It was perhaps unfortunate that the decision extended so far as to deny the right of judicial inquiry into even the most flagrant instances of legislative corruption. The people have suffered in every State in this Union, and even under the United States government, from the rule established by that decision, and which exempts legislative proceedings from all judicial inquiry upon the ground of fraudulent or corrupt procurement.

As has been already stated, by the organization of the government, if the judges of the Supreme Court are corrupt, they can be impeached, and there is no department of the government that is exempted from trial and responsibility for their acts, except the Legislature. They are exempt under the unfortunate rule established in the case to which I have referred, and which has been perpetuated until it has become a sort of common law, that what the Legislature does, however corrupt, shall not be inquired into.

It is suggested that if a question of this sort goes to the Supreme Court, it may be subjected to delay; but gentlemen forget that if the law is such a one as ought to pass an honest Legislature, and it did pass, they will re-enact it, and there is no such protracted delay as the gentleman from Philadelphia (Mr. Biddle) suggests. The thing we are seeking to prevent is dishonest and fraudulent legislation. If there be a question, such as this section

contemplates, about a law, and it is held in long suspense in the Supreme Court, the Legislature can promptly re-enact the law if they please, and thus cut off the delay.

Then, again, this section will not go into operation unless probable cause be shown to the satisfaction of the Supreme Court. In the first instance, a *prima facie* case must be made out; and if the showing to that court does not make a *prima facie* case, then the six months soon expire and the act of Assembly takes its place, and is a recognized law without power of reversal. But there is a provision in the Constitution of many of our States already, that no law shall go into operation until six months after its passage, and there are many reasons why such a provision would be wise; but we have not adopted such a provision, nor any limitation upon the operation of an act fairly passed. The very instincts of men tell them what laws are passed to which suspicion justly attaches, and such laws, and such only, are those that would be brought in review before the court.

I see upon every hand, with the fullest consideration I have been able to give this subject, a vast amount of good to result from the adoption of this section. I can see nothing in objection to it that is, in my judgment, of any very great weight. It is easy to suggest imaginary cases in which it might in a certain conceivable condition of things be inconvenient. A stay law has been suggested as one such case. If it be a stay law, and if this section is to operate upon it, it operates of itself and is *ipso facto* a stay law, and the longer the delay, the longer the stay.

So again a possible embarrassment is suggested if the State in an emergency desires to borrow money. These reasons are more specious than sound. It is within the knowledge of all the gentlemen of the Convention that the banks of Philadelphia during the late war lent more than a million of dollars to the State of Pennsylvania and waited a year for an act which should legitimate the loan. They did it upon that general faith which rests in the Commonwealth everywhere, that Pennsylvania will be true to her trusts, true to her interests, and true to the good faith of the pledges of her executive officers when public necessities require extraordinary exercise of power.

But suppose there are inconveniences attending this measure; they are by no

means insuperable nor peculiar to this section; they appertain to all human contrivances of government. Are we to weigh the inconveniences, which I think are slight, and which the able men of this Convention have so zealously suggested, against the prevention of the enormous frauds which we know are perpetrated in the Legislature, would be extremely unwise? Since this argument commenced I have had placed in my hands an official paper showing the passage of an act at the very last session of the Legislature, and I have here also a certified copy of the act as approved by the Governor and in which five important lines are omitted.

I have no wholesale denunciation to launch against the members of the Legislature, and I have not indulged in it. I believe the personal corruption of members is largely exaggerated; but no man can shut his eyes to the fact that fraudulent legislation is enacted, and in very important cases, and in large amount. It is a fact which we cannot ignore, and which, as wise men, we ought not to attempt to overlook. Now, taken in connection with the provisions which have already been inserted in this Constitution, and adding this to them as being in the same line of prevention and seeking to accomplish the same purpose, I believe it will do more, taking them altogether, to give us wise, beneficent and honest legislation in Pennsylvania, than has been accomplished in any of the States.

To say that this is new is only repeating what was stated in the beginning. It is new because the people are slow to act, and they suffer until grievances become too heavy to be borne. That is the experience which has forced all the States of the Union to an earnest consideration of this question. So far as the newspapers have commented upon this provision, at least so far as it has come to my knowledge, it has all been in one direction and favorable. The public sentiment approves it. It stands approved in the good judgment of a majority of this Convention, and I hope that the very next vote we shall take will show that it has grown in favor rather than diminished. Let us cast all wise protection around our legislation. We seek to secure an honest Legislature. Let us cast every reasonable safeguard around the mode of their legislation. Let us combine all measures and all efforts which will best promote honesty of legislation, and we shall by this means best

promote the interests and the happiness of the people.

Mr. BOWMAN. Mr. President: I am unwilling—

The PRESIDENT *pro tem.* Has the delegate spoken on this question before?

Mr. BOWMAN. No, sir, I have been sitting here quietly all day and heard about thirty speeches on the pending question.

The PRESIDENT *pro tem.* Then the delegate will proceed,

Mr. BOWMAN. I say, sir, I am unwilling that the vote shall be taken on this proposition without entering my protest against its passage. When it was brought forward last evening, and read at the Clerk's desk, and ordered to be printed and laid upon the desks of the members. I supposed that there would not be much time occupied in its discussion. I really believed that the gentleman who offered it threw it out as a sort of feeler, that he was not really sincere in it, notwithstanding I have no particular reason to doubt his sincerity upon general questions.

Now, sir, what is proposed? It is proposed that one branch of the State government shall subvert, if not annihilate, the other two. It is proposed that the judicial branch of our State government shall call to its aid a jury selected promiscuously through the country, and that that court and that jury, as thus constituted, shall pass upon the question whether an act of Assembly shall be received as the law of the land or not. That is the straightforward proposition. With all the safeguards we have undertaken to throw around the Legislature to protect the people against the passage of laws procured by fraud, corruption or other undue means, it seems to me we have done all that the people expected us to do, all that they required at our hands. But now, after we have limited the powers of the Legislature and crippled that branch of the State government in every possible way in which it could be done, we are called upon to drive the last nail into the lid of the coffin of the legislative branch of our government.

Why, sir, I regard this proposition as simply monstrous. We have been taught that "law is a rule of action; prescribed by the supreme power in the State, commanding what is right and forbidding what is wrong." You propose to make a court and a jury the supreme power of the State, and allow them to annul the statutes bearing the broad seal of the

Commonwealth. I ask the gentlemen who are supporting this proposition if the tribunal to which they appeal is not human? Who made the judges, who made the jury that are to pass upon this vital question, one that is vital to the interests of the people of the Commonwealth? Have judges always been pure? Are they immaculate and incorruptible? I ask if the judiciary has always been pure and untainted? How is it in the State of New York to-day? It is a stench in the nostrils of every pure man in the whole nation.

Then, again, if there is one thing more uncertain than another, as the legal gentlemen on this floor will bear me witness, it is the verdict that may be rendered by a petit jury. You propose to submit this question to a jury, to let them ascertain whether bribery, corruption or undue means have been used in procuring the passage of a law.

Sir, let us preserve the three branches of our State government intact. Let us look to the executive branch of the government, as we have heretofore, with pride. Let us look to the legislative branch of the government as the law-making power, and let us limit and prevent that body as far as we can by fundamental enactment from doing evil. Let us preserve the judiciary as pure at least as we found it when we assembled together.

Mr. President, this whole thing puts me in mind of a case that our mutual friend—and I do not know that there is any impropriety in naming him here—Colonel Curtis, used to relate. He said he had a client away up in one of the backwoods counties who brought a suit before a magistrate and recovered. The defendant took an appeal and carried his case to the court of common pleas, and he defeated the plaintiff. The plaintiff was not satisfied, and he took his appeal to the Supreme Court, and he was there defeated again. Some one said to him: "Now, sir, I suppose you will let your case rest." "No," he replied, "I will do no such thing; I will appeal it back to the justice of the peace." [Laughter.]

Sir, we are trying to do that very thing. We say the Legislature is the law-making power; but after they enact their laws we propose to say that the validity of those laws shall be tried by twelve men, picked up promiscuously in the State; that they shall determine whether they are laws or not. Gentlemen are not

even willing to accept the amendment of the delegate from Franklin, (Mr. Sharpe,) which provides that vested rights, rights that have accrued after the passage of the law, shall remain irrevocable.

One word further and I am done. I borrow the idea from his Honor, Judge Black, and I am going to illustrate the subject under consideration by referring to what I read in his "Recollections," published in the *Galaxy* some two or three years ago. In speaking of the judiciary of New York, he said that a party could go into the Supreme Court of that State, at Rochester, and obtain an injunction to restrain a certain corporation from doing certain acts. The other party could go into the city of Buffalo and obtain a writ restraining him. Then the first party could go on to Albany and get another writ, and the other party could go to the city of New York and obtain another; and he said that what they ought to do was to go into the court and ask for a writ of injunction to enjoin all previous courts and parties to *refrain* from further *re-fraining*. [Laughter.]

These injunctions, says the learned judge, are not mere *brutum fulmen*; the judicial guns on either side are loaded to the muzzle with the heaviest metal they can ram down. And so it is here. We are asked to put into the fundamental law of our State a provision that hereafter no law passed by the Legislature shall be valid if somebody will say on oath that its passage was obtained through bribery or fraud. They say that fraud vitiates everything it touches, and so it does; but did it ever occur to gentlemen that it sometimes takes possession of the judicial bench? Does it corrupt their decisions when they declare the law? When rights become vested under judicial sanction, I ask the honorable gentlemen who support this section if there is any power on this side of God's throne which will change those rights so vested? It becomes the fixed law of the land and the people must submit.

The PRESIDENT *pro tem*. The gentleman's time has expired. The question is upon the section as amended.

Mr. STANTON. Upon this section I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The PRESIDENT *pro tem*. The yeas and nays have been demanded, and the Clerk will proceed with the call.

Mr. NILES. There is a misunderstanding here. Some of us think that the

amendment of the gentleman from Franklin (Mr. Sharpe) is contained in the section and others think it is out. We desire to understand the question correctly before we vote.

The PRESIDENT *pro tem*. The amendment of the gentleman from Franklin was not adopted, and is not a part of this amendment.

Mr. BARTHOLOMEW. That is the reason why I shall change my vote. I shall vote "nay," because the amendment of the gentleman from Franklin was stricken out.

The CLERK proceeded to call the roll.

Mr. BEEBE. (When his name was called.) I vote "nay," for the reason that the amendment of Mr. Sharpe was not inserted. I positively understood it was agreed that it should be so done when I voted for the proposition before.

Mr. BROWN. (When his name was called.) I am paired with the gentleman from Dauphin (Mr. MacVeagh) upon this question. He would vote in favor of this section and I should vote against it.

The call of the yeas and nays having been concluded, the result was announced, as follow :

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Barclay, Bigler, Black, Chas. A., Brodhead, Buckalew, Bullitt, Calvin, Campbell, Church, Corson, Curry, Fulton, Gibson, Gilpin, Guthrie, Hay, Hazzard, Kaine, MacConnell, M'Clean, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purman, Read, John R., Reed, Andrew, Russell, Smith, Henry W., Stewart, Struthers, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—43.

N A Y S .

Messrs. Bailly, (Perry,) Baker, Bannan, Bartholomew, Beebe, Biddle, Bowman, Boyd, Broomall, Carter, Cochran, Corbett, Darlington, De France, Edwards, Fell, Finney, Funck, Green, Hanna, Harvey, Hunsicker, Lamberton, Landis, Lawrence, Lear, Lilly, Mann, Minor, Niles, Patterson, D. W., Reynolds, Rooke, Sharpe, Simpson, Stanton, Van Reed, Walker and White, Harry—39.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bardsley, Black, J. S., Brown, Carey, Cassidy, Clark, Collins,

Craig, Cronmiller, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning, Elliott, Ellis, Ewing, Hall, Hemphill, Heverin, Horton, Howard, Knight, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Pughe, Purviance, John N., Purviance, Samuel A., Ross, Runk, Smith, H. G., Smith, Wm. H., Temple, Turrell, Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—51.

The *PRESIDENT pro tem.* The twentieth section of the article will be read.

The *CLERK* read as follows:

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 *visi pirus* 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 *PRESIDENT pro tem.* The twenty-first section will be read.

The *CLERK* read as follows:

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 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 the parties, except where all parties in interest in a pending proceeding shall nominate an auditor, whom the court may in its discretion appoint.

Mr. ARMSTRONG. I move to amend in the following particular:

In the thirteenth line to insert before the word "salary" the word "fixed," and to strike out the word "fixed" where it afterward occurs.

The *PRESIDENT pro tem.* Has the gentleman many of his amendments?

Mr. ARMSTRONG. There are several of them, but they are all merely verbal changes.

The *PRESIDENT pro tem.* The gentleman from Lycoming had better forward his amendments to the Clerk's desk.

Mr. ARMSTRONG. I desire the section so amended that it will read:

"The register of wills shall be compensated by fixed salary, to be ascertained and paid as provided by law. He shall be *ex-officio* clerk of the orphans' court, and subject to the direction of said court in all matters pertaining to his office."

Then also, in the seventeenth line, I desire to strike out the words "such separate" to insert the words "in the."

These changes are only verbal, and while they do not in any sense change the meaning of the section they improve its phraseology.

The amendments were agreed to.

Mr. ALRICKS. I move to further amend in the sixteenth line, by striking out the words "but only with the consent and approval of the court." That is that the register shall not appoint his own clerk except with the consent and approval of the court.

Mr. LILLY. I hope that will not be stricken out.

On the question of agreeing to the amendment proposed by Mr. Alricks, a division was called for, which resulted thirteen in the affirmative. Not being a majority of a quorum, the amendment was rejected.

Mr. H. W. PALMER. I move to further amend, by striking out the words "two hundred thousand" and inserting "one hundred and fifty thousand."

This amendment will only affect one county, the county of Luzerne. The only other two counties that can possibly be affected by it in any short period of time are the counties of Schuylkill and Lancaster—the one with a population of 118,000 and the other with a population of 116,-

000. If this section is so amended as to include Luzerne county, it is not likely that our judicial force will have to be increased. Otherwise we shall have to have another judge. I hope the Convention will adopt this amendment.

The amendment was agreed to.

Mr. BANNAN. I move further to amend, by striking out, in the sixth line, the words "shall and in any other city or county," so that the section will read:

"In every city and county wherein the population shall exceed 150,000, the Legislature may establish a separate orphans' court."

If these words are left in the section, the Legislature will have the power to establish a separate orphans' court in any county, whether the citizens require it or not. I do not think the Legislature ought to have any such power as that. We already have too many orphans' courts throughout the whole State in counties where there is no necessity for having them.

Mr. KAINE. I suggest to the gentleman from Schuylkill that he leave in the word "shall" and strike out "may" at the end, so as to make the sentence read:

"In every city and county wherein the population shall exceed 150,000, the Legislature shall establish a separate orphans' court."

Under the amendment of the gentleman from Luzerne, reducing the population from 200,000 to 150,000, I think it will be very proper to make this modification.

Mr. BANNAN. I accept that.

Mr. ARMSTRONG. I inquire what the effect of that would be.

Mr. KAINE. Nothing. The Legislature can do it anyhow if they want to. [Laughter.]

Mr. ARMSTRONG. It is to be borne in mind that we have already inserted a section in this article that the Legislature may create other courts to do any business. Now, as we have already authorized the court of common pleas, I think this section is properly worded as it stands, and that it would be proper to retain this language.

Mr. J. M. BAILEY. I desire to remind the Convention that we have already provided in another section that every county in the State containing a population of 30,000 shall be a separate judicial district.

Mr. LILLY. We are going to change that.

Mr. J. M. BAILEY. I hope it will be stricken out; but we have it in now; and

to invite the Legislature, in addition to these separate judicial districts for every county of 30,000 population, to establish separate orphans' courts in those counties would be over-burdensome, and I hope the Convention will strike this part out.

Mr. HANNA. I move to amend the amendment, by striking out in the third line after the word "court" all down to the word "determine," in the twelfth line.

MANY DELEGATES. No! No!,
The PRESIDENT *pro tem*. That is hardly an amendment to the amendment.

Mr. HANNA. Then I will withdraw it for the present and renew it when the pending amendment is disposed of.

Mr. BIDDLE. I ask for the reading of that amendment.

The CLERK. It is moved to strike out in the sixth line the words, "and in any other city or county may," so that the section will read: "In every city or county where the population shall exceed 150,000, the Legislature shall establish a separate orphans' court."

Mr. SIMPSON. I trust the amendment of the gentleman from Schuylkill will not be agreed to. I shall have no objection if he will so modify it that the Legislature may in certain cases, say in counties where the population is seventy-five thousand or upwards; and I think the population of counties smaller than that should have a separate orphans' court established, with the consent of the Legislature. If this amendment be adopted it will be impossible for the Legislature to establish an orphans' court, no matter how necessary it may be, or how much the people may demand it in any of these small counties; and certainly the Legislature ought to have that power.

Mr. HOWARD. I am perfectly satisfied that in our county we should be very glad indeed to have a separate orphans' court, and I believe that is the opinion of our people. I cannot see why it cannot be so arranged that the larger counties should have a separate orphans' court. It would relieve the court of common pleas and assist us in the performance of our duties.

Mr. COCHRAN. If I understand the object of the amendment now pending, it is to strike out the provision which gives the Legislature authority to establish probate courts in certain counties of small population. If it is intended to vest the power in the Legislature and make it imperative for the Legislature to provide these courts, I hope that will be strick-

en out and that it will be left optional with the Legislature to do so. My own desire would be to have a separate probate court, which should supercede the register of wills entirely in certain counties; but that was rejected in committee of the whole, and we were cut down to this provision, which is all that is left for us. I hope the Convention will not go to work now and deprive us of a provision which may be very material and useful to some counties of the State.

Mr. ARMSTRONG. I concur entirely with the remarks of the gentleman from York.

The amendment was rejected.

Mr. J. M. BAILEY. I have a couple of amendments to suggest, which I think will meet the unanimous consent of the Convention. They are to strike out in the twelfth and thirteenth lines the words, "to be compensated by a fixed salary to be ascertained by law, and shall." We have already provided that the register of wills shall be a county officer, and that all county officers shall be paid a fixed salary, to be ascertained by law. This is, therefore, entirely unnecessary in this section. I think we shall all agree that our Constitution will be quite long enough without having any of it repeated.

Mr. ARMSTRONG. We had better leave all that to the Committee on Revision and Adjustment, and if they find it unnecessary or incongruous they can strike it out.

On the question of agreeing to the amendment proposed by Mr. J. M. Bailey a division was called for, which resulted thirty-three in the affirmative. This not being a majority of a quorum, the amendment was rejected.

Mr. HANNA. I now move to amend by striking out all after the word "court," in the fourth line, down to and including the word "determine," in the twelfth line, and I will state my reasons for the amendment. It appears by this section that it becomes an imperative duty on the Legislature to impose upon every city and county having a population of over 150,000 a separate orphans' court. I submit that there is no necessity for including such a proposition as this in the Constitution. It gives us in the city of Philadelphia a separate orphans' court. For this there is no necessity whatever. At present the judges of the court of common pleas perform that duty. We have now five judges of the court of common

pleas, and under this amended Constitution it has been provided that the city of Philadelphia shall have twelve judges of the court of common pleas. Why cannot these judges perform that duty, and at the same time attend to the business of the orphans' court, that is now performed by five judges? I see no reason why they cannot. Why impose upon the city of Philadelphia the additional expense of a separate orphans' court? There is no reason for it whatever, in my judgment.

Again, if it becomes necessary hereafter, to meet the wants and necessities of the people of Philadelphia, to have a separate orphans' court provided, it can readily be done. The Legislature can afford any relief needed in that direction. By the very first section of this article it says that the Legislature from time to time shall establish such other courts as may be necessary, and certainly that confers all requisite power in the premises. On the contrary, by this section you make it the imperative duty of the Legislature to authorize a separate orphans' court in the city of Philadelphia.

If we pass the section, leaving it optional with the Legislature, by striking out "shall" and inserting "may," I would not object to it, because then if the bar and the community of Philadelphia need the establishment of a separate orphans' court, we can petition the Legislature to that effect and have the court established. But I do trust that this Convention will not adopt this section in its present shape and will not impose this unnecessary expense on the city of Philadelphia, unless such a separate orphans' court is demanded by the people.

As I have remarked, the Convention has thought fit and proper to impose upon the city of Philadelphia a court of common pleas of twelve judges. Certainly they can perform the same duty that the five judges do now. The five judges of the court of common pleas in Philadelphia now not only, to the entire satisfaction of the bar and the community, attend to all the business relating to the settlement of decedents' estates, but also to the miscellaneous business of the court of common pleas. And in addition to that these five judges attend to all the criminal business, hold the courts ofoyer and terminer and quarter sessions, each judge taking a month about for that purpose. If these five judges can do all this work, can perform all this labor, can

work up our jury lists, our trial lists, our quarter sessions business, our orphans' court business, our road cases, our equity business, our feigned issues and everything else, I take it that twelve judges, out of which you propose to form the court of common pleas, ought to be able to do as much. I submit, as a plain, practical business question, that you should leave this subject optional with the Legislature. Then if the bar of Philadelphia

deem it necessary they can ask the Legislature to establish a separate orphans' court for this city and have it granted to them.

Therefore I make this amendment, and I trust that the Convention will not place this section in the form proposed.

The PRESIDENT *pro tem.* The hour of six o'clock having arrived the Convention stands adjourned until to-morrow at nine o'clock A. M.

ONE HUNDRED AND THIRTY-FOURTH DAY.

THURSDAY, July 3, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

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

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tem.* presented a communication from the Seventh Day Baptist Association, composed of Seventh Day Baptist churches of Western Pennsylvania and Northern New York, requesting the Convention to take no action in reference to the observance of the Sabbath, which was laid on the table.

LEAVES OF ABSENCE.

Mr. WRIGHT asked and obtained leave of absence for himself for a few days after this morning's session.

Mr. D. W. PATTERSON asked leave of absence for himself for a few days from to-morrow.

The PRESIDENT *pro tem.* Will the Convention grant the leave asked by the delegate from Lancaster? ["No." "No."] Leave of absence is not granted.

Mr. MACVEAGH. I shall be obliged to my colleagues if they will listen for one moment to a personal explanation. I am sorry to say that I am advised by competent authority that I ought not to remain here during the month of July. I have had such pleasant relations with everybody in this Convention and have enjoyed my associations here so much that I simply desire to do what my colleagues would wish me to do. If they think that under the circumstances I ought to resign my place I am perfectly willing to do that. ["No." "No."]

Mr. BIDDLE. I hope you will not do any such thing.

Mr. CARTER. I move that the gentleman have leave of absence as long as he wants it.

Mr. BIDDLE. I second that motion, and I say in seconding it that I do not believe there is a single voice in this Convention that will not be raised against the gentleman's resignation.

The motion was agreed to.

Mr. HAY. I am requested by Mr. Ewing to ask leave of absence for him for a few days from to-day.

Leave was granted

Mr. BOYD asked and obtained leave of absence for himself for a few days from next Monday.

Mr. BEEBE. I ask leave of absence for all the members of this Convention for two months from to-day. [Laughter.]

Mr. BARTHOLOMEW. I second that.

Mr. BEEBE. I think it is a reasonable request.

The PRESIDENT *pro tem.* The Chair declines to entertain the motion.

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

Mr. BARTHOLOMEW asked and obtained leave of absence for himself for a few days from to-day.

Mr. BOWMAN asked and obtained leave of absence for Mr. Brown until next Tuesday.

Mr. H. W. SMITH asked and obtained leave of absence for himself for a few days from Monday next.

M'ALLISTER MEMORIAL.

Mr. CURTIN. Mr. President: I desire to make a statement. The memorial in honor of our late colleague, Mr. Hugh N. M'Allister, is now prepared for distribution, and I find on looking at it this morning that unfortunately the proceedings of the barand of the sessions of the church in Bellefonte, to which he belonged, are printed in the book. The family desired to have the proceedings of the Convention enlarged so as to cover the proceedings at their home, and a consideration was fixed with the printers at which they should publish two hundred and fifty copies for their use; but unfortunately I find that the proceedings of the town meeting in Bellefonte are put in the memorial of this Convention, through an inadvertence of the publisher. I regret it very much indeed, as it is certainly in very bad taste, but it is not the fault of the gentlemen of this Convention who had the control of this publication—I re-

fer to the gentleman from Mifflin, (Mr. Andrew Reed,) the gentlemen from Huntingdon, (Mr. J. M. Bailey,) and myself. With that explanation I report to the members that the memorial is now ready for distribution.

Mr. ALRICKS. Allow me to say a word. We called yesterday on the printer, and he said we were not charged with the extra work that was done.

Mr. CURTIN. I am not speaking of the cost, but of the fact.

PROPOSED RECESS.

Mr. TEMPLE. I offer the following resolution:

Resolved, That when this Convention adjourns to-day, it will be to meet on Monday next at ten o'clock A. M.

Mr. H. G. SMITH. I move to postpone for the present.

Mr. ARMSTRONG. I desire to appeal to the Convention for one moment.

The PRESIDENT *pro tem*. The question is, will the Convention proceed to the second reading and consideration of the resolution.

The motion was agreed to, there being on a division ayes thirty-four, noes thirty-two.

So the resolution was ordered to a second reading.

The resolution was read the second time and considered.

Mr. ARMSTRONG. I desire to make a suggestion to the Convention. We are losing a great deal of time by unnecessary debate and the calling of the yeas and nays on questions of adjournment. Now, I submit to the Convention whether it would not be better to proceed immediately to the consideration of the article on the judiciary, which we can probably finish in two or three hours, and then by unanimous consent take up this question of adjournment and consider it fairly and end the matter, that we may not be disturbed by any waste of time. I believe it would facilitate the business of the Convention and save a great deal of time.

Mr. STEWART. I move to amend by striking out "Monday next" and inserting "the second Tuesday in September next."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin.

Mr. LILLY. I move to postpone the resolution until after we get through with the judiciary article. ["No!" "No!"] I will withdraw that motion to allow the

delegate from Delaware (Mr. Broomall) to offer a substitute.

Mr. BROOMALL. I offer the following substitute for the resolution:

Resolved, That the Convention shall finish the article on the judiciary to-day and that the session be prolonged if necessary for that purpose.

Second. That the articles in their condition at the close of this day be published in pamphlet form, and fifty copies thereof be furnished to each delegate for distribution.

Third. That when the Convention adjourns to-day, it will be to meet on the third Tuesday in October next.

The PRESIDENT *pro tem*. The question is on the substitute of the gentleman from Delaware.

Mr. CARTER. I do hope that no such proposition as that will prevail. ("Question!" "Question!") I am not going to detain the Convention, but I claim the right to speak, and I will be heard.

We will excuse those that are weak in health and let them go; but, sir, if we work with the same persistent energy that we have displayed in the last ten days, in which we have gone over six or eight important articles, we can finish the two remaining articles in the next ten days. The delay yesterday was occasioned by the section under consideration not having been considered in committee of the whole. It had never been discussed. I am satisfied that if we work away as we have done lately, in ten days our work will be done. Now, let the weak and the lame and disorganized be given leave of absence. I am not one of them, and I am only in my seventieth year, and I am perfectly willing to sit here and work, and we are doing more work and more efficient work each day now than we did in the winter. We have a larger attendance. I am sure it is not unhealthy here. In truth, as to my own case, I went to the country on Saturday and Sunday and got sick, and I came back here to get well. We are in one of the coolest buildings in Philadelphia. Some of our members are actually growing obese with the fine living and fine air. [Laughter.] It is all a delusion that we must quit our work now and go home, when we are fairly under way; and I hold that we can finish in the next ten days.

Some gentlemen affect to sneer at the opinions of the press in regard to our staying here and completing our work, but in my experience I have seen that

those men who profess to care least for the opinions of the press really care the most. I consider the press as the exponent of public sentiment. They always reflect the wishes of the people. It is their business to do it. ["Question." "Question."]

I will speak a minute longer. You cannot cry me down. I say that the press does express the sentiments of the people, and its utterances are entitled to our consideration; and, sir, the sentiment of the people is for us to finish our work. I propose to place myself upon record, and we will have a call of the yeas and nays, and show at least those who are willing to shrink from their duty.

Mr. BROOMALL. I only desire to say that my object in offering this amendment is not so much because I want to get away from here during the hot weather as to give the people an opportunity of seeing what we are proposing to do. They are utterly ignorant of what is going on here, and I think the suggestions that would come from the country in the interval would be very valuable. I would be very sorry to see us do something here that we should regret before two or three months had passed by, in our haste to get rid of what is of course an unpleasant job to us. I was going to say that if it is the desire of the Convention I will withdraw the day of meeting named by me, the third Tuesday of October, and leave that blank, to be filled by the Convention if the amendment should be adopted.

Mr. BIGLER. I desire to appeal to the gentleman from Delaware to modify his proposition. I rose to object to it earnestly. If we adjourn to the third Tuesday in October, it will be impracticable to submit the amendments so that they may be ratified and applied to the coming Legislature. Now, sir, I think that is the great practical point before us, and no proposition to adjourn should be entertained which will defeat that object. I mean that if a recess is absolutely necessary, it should not go beyond the period at which we could complete our work and have it ratified in November or December, and I shall not, for one, vote for any proposition which puts that object out of the reach of the Convention. The gentleman from Delaware, I believe, has modified his amendment.

Mr. BROOMALL. No; I prefer letting it stand as it is.

Mr. BIGLER. Very well, sir; then I hope the Convention will vote it down.

I think it of the utmost importance, and it is entirely practicable, that this Convention complete its work and have it adopted or rejected by the people before the meeting of the next Legislature.

Mr. HAY. I ask for a division of the amendment, if it is in order, into three divisions.

Mr. LILLY. You cannot divide a substitute.

The PRESIDENT *pro tem.* As a substitute, it must be acted upon as a whole and cannot be divided.

Mr. BROOMALL. I desire to ask whether it can be voted upon with the blank day of meeting and the blank filled afterwards?

The PRESIDENT *pro tem.* It can.

Mr. BROOMALL. Then I withdraw the day of meeting, leaving that blank, to be filled afterwards, if it passes.

Mr. LAWRENCE. I move to lay the resolution, with the amendments, on the table.

Mr. CARTER. I second the motion.

Mr. LILLY and Mr. BOYD. I call for the yeas and nays.

Mr. ROSS. I second the call.

The CLERK proceeded to call the roll, and the call having been concluded—

Mr. ARMSTRONG. I rise to a parliamentary inquiry, and that is whether if this motion be carried it will be possible to resume the same question again to-day without a two-thirds vote?

The PRESIDENT *pro tem.* It will if the proposition offered fixes another day for re-assembling.

Mr. ARMSTRONG. The purpose of my inquiry is this: If, after the article on the judiciary is finished, we can resume the consideration of the question of adjournment, then my vote stands as I have cast it, "yea." If not, I shall vote "nay." I ask of the Chair what would be his decision on that question.

The PRESIDENT *pro tem.* The Chair thinks it would not be allowable to take up a resolution out of order without a two-thirds vote.

Mr. ARMSTRONG. Then I vote "nay" on this question.

Mr. FUNCK (having voted in the affirmative.) Under the ruling announced by the Chair, I change my vote from yea to nay.

Mr. T. H. B. PATTERSON. I submit the gentleman has no right to change his vote.

The PRESIDENT *pro tem.* If the gentleman voted under a misapprehension of

the question he has a right to change his vote.

Mr. T. H. B. PATTERSON. I did not understand him to say that.

Mr. LAWRENCE. I ask the gentleman whether he voted under a mistake of the question. If not, he has no right to change his vote.

Mr. GIBSON (having voted "yea.") I voted under a misapprehension, and change my vote to "nay."

The PRESIDENT *pro tem.* If the gentleman voted under a mistake of the question he has a right to change his vote. Did he?

Mr. GIBSON. I understood the direct question, but I did not understand the effect of the vote.

The PRESIDENT *pro tem.* The effect of the vote is one thing; the vote itself is another.

Mr. ARMSTRONG. I suppose if a man votes under a misapprehension of the practical effect of his vote that he has voted under a misapprehension. ["Certainly."]

The PRESIDENT *pro tem.* Is there objection to permitting the gentleman from York to change his vote? The Chair hears none.

Mr. GIBSON. I vote "nay."

Mr. FUNCK. I ask that my vote be changed from "yea" to "nay."

Mr. LAWRENCE. I hope the Chair will announce the decision.

The PRESIDENT *pro tem.* Gentlemen have a right to change their votes if they voted in error. The Chair hears no objection to permitting them to change, and the vote of the gentleman from Lebanon will be changed accordingly.

The result was announced as follows:

Y E A S .

Messrs. Achenbach, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Fulton, Gilpin, Guthrie, Hay, Heverin, Lawrence, Lilly, Long, MacConnell, McClean, Mann, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Reed, Andrew, Rooke, Simpson, Struthers, Temple, Walker, White, Harry, Worrell and Wright—44.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baker, Bannan, Barclay, Bartholomew,

Beebe, Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Curry, Curtin, Elliott, Ellis, Fell, Funck, Gibson, Green, Hanna, Harvey, Hazzard, Hemphill, Howard, Hunsicker, Kaine, Knight, Lamberton, Lear, MacVeagh, Metzger, Minor, Mitchell, Parsons, Patton, Porter, Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Stewart and Van Reed—48.

So the motion to lay on the table was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Cassidy, Church, Collins, Corson, Craig, Cronmiller, Cuyler, Davis, Dunning, Ewing, Finney, Hall, Horton, Landis, Littleton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Furman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

The PRESIDENT *pro tem.* The amendment is before the Convention.

Mr. STEWART. Mr. President: I do decidedly object to so much of the amendment of the gentleman from Delaware as provides for the publication of our work. I think it is extremely unwise. We have completed nothing so far; at least we have carried nothing to that point beyond which we can go no further. Whatever work we have done is subject to modification and change; and if published in that condition it simply invites criticism to which we ought not to be exposed. There is no reason, in my judgment, why the work of the Convention at this stage should be published and submitted to the people. It is not the final result of our labor. For that reason I shall vote against the amendment of the gentleman from Delaware.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Delaware (Mr. Broomall.)

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

The PRESIDENT *pro tem.* The Chair has decided that the substitute cannot be divided.

Mr. COCHRAN. I wish to make one suggestion, not to make a speech. The simple proposition that I have to submit is, that if we are going to vote on this amendment we must fill the blank before we pass the resolution; we must fix the day before we vote on it.

Mr. BARTHOLOMEW. I move to fill the blank with the "third Tuesday of October."

The PRESIDENT *pro tem.* The question is on the motion to fill the blank.

Mr. STEWART. There are already two amendments to the resolution.

The PRESIDENT *pro tem.* It is in order to fill the blank, the Chair supposes.

Mr. BARTHOLOMEW. I withdraw my motion, and move to fill the blank with "the third Tuesday of September," which seems to be more acceptable.

Mr. D. W. PATTERSON. It is in order to fill the blank.

The PRESIDENT *pro tem.* There is a motion to fill the blank pending.

Mr. D. W. PATTERSON. I move to amend, by inserting "the eighth of July."

The PRESIDENT *pro tem.* After the vote is had on the motion of the gentleman from Schuylkill, if that is rejected, a further motion will be in order.

Mr. HOWARD. Is it in order to name the time for this Convention to meet when they adjourn to-day?

The PRESIDENT *pro tem.* There is an amendment to an amendment now pending. When that is negatived, if it shall be, a further amendment will be in order. The question is on the motion of the gentleman from Schuylkill to fill the blank.

Mr. BARTHOLOMEW. At the request of several gentlemen, I withdraw my motion again, and move to fill the blank with "the second Tuesday of September."

The PRESIDENT *pro tem.* The Chair, on reflection, will rule out of order the motion of the delegate from Schuylkill, and state that when the amendment is adopted, if adopted, then a time may be inserted, but not before.

Mr. STEWART. I desire to state that my amendment to the original resolution provides that when the Convention adjourns to-day it be to meet on the second Tuesday of September. The amendment of the gentleman from Delaware is to my amendment, and if that is voted down then the question comes up squarely, shall we meet on the second Tuesday of September?

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Delaware (Mr. Broomall) to the amendment of the gentleman from Franklin (Mr. Stewart.)

The amendment to the amendment was rejected.

The PRESIDENT *pro tem.* The question is now on the amendment of the gentle-

man from Franklin, to strike out "Monday next" and insert "the second Tuesday of September."

Mr. CAMPBELL. I call for the yeas and nays.

Mr. CORBETT. I second the call.

Mr. HOWARD. I move to amend the amendment by inserting after the word "meet" the words "at Harrisburg."

The PRESIDENT *pro tem.* That would not now be in order.

Mr. HOWARD. Only one amendment is before the Convention.

The PRESIDENT *pro tem.* The gentleman is right. The Chair misunderstood the amendment. It will be received if the gentleman desires it.

MANY DELEGATES. Offer it afterwards.

Mr. HOWARD. I withdraw it for the present, and will offer it afterward.

The question being taken on Mr. Stewart's amendment by yeas and nays, resulted as follows, viz:

YEAS.

Messrs. Ainey, Armstrong, Baker, Bannan, Barclay, Bartholomew, Beebe, Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Curry, Curtin, Elliott, Ellis, Fell, Green, Hanna, Harvey, Hazzard, Hemphill, Hunsicker, Knight, Lamberton, Lear, Long, MacVeagh, Metzger, Minor, Mitchell, Mott, Parsons, Patton, Reynolds, Ross, Sharpe, Smith, H. G., Stanton, Stewart, Struthers and Van Reed—45.

NAYS.

Messrs. Achenbach, Alricks, Baily, (Per ry.) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Kaine, Landis, Lawrence, Lilly, MacConnell, McClean, Mann, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Temple, Walker, White, Harry and Wright—46.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Cassidy, Church, Collins, Corson, Craig, Cronmiller, Cuyler, Davis, Dunning, Ewing, Finney, Hall, Heverin, Horton, Littleton, McCamant, McCulloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R.,

Runk, Russell, Smith, William H., Turrell, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, *President*—42.

Mr. TEMPLE. I ask if it now is in order to withdraw the original resolution?

The *PRESIDENT pro tem.* No, sir.

Mr. HOWARD. I now renew my amendment, to strike out all after the word "meet" and insert "at Harrisburg on the second Tuesday of September next," and on that amendment I call for the yeas and nays.

Mr. STEWART. I second the call.

Mr. BROOMALL. Is the amendment further amendable?

Mr. TEMPLE. This is an amendment to the original resolution, and therefore another amendment is in order.

The *PRESIDENT pro tem.* That is correct. The amendment can be amended.

Mr. BROOMALL. Then I move to strike out "Harrisburg" and insert "Philadelphia."

Mr. LILLY. I hope the House will not waste any more time on this subject. This amendment to the amendment is certainly not in order. We have just voted it down by a call of the yeas and nays. Let us now vote on this question in order and settle it in some way, and then we can get to work.

Mr. HANNA. Mr. President: I am sorry that my friend from Allegheny (Mr. Howard) has thought proper to introduce this amendment. I shall not trouble the House with a speech on the subject, but merely remind it that when the Convention met in Harrisburg the invitation of the authorities of the city of Philadelphia was received in the same cordial spirit in which it was extended. In pursuance of that action of the Convention, the city of Philadelphia, having purchased this property, went to large expense to fit it for the purposes of the Convention. They expended between \$25,000 and \$30,000 for the purpose of converting this ancient church into a hall for the meetings of the Constitutional Convention. From that time we have met here; and I may say that when posterity come to read the debates of this Convention they will find, as one of the *curiosities* of its proceedings, that whenever a motion has been made to adjourn, a motion has been made to meet at Harrisburg. Now, sir, I say that is one of the *curiosities* of the proceedings of this Convention. I submit to the calm, candid judgment and

reflection of the members of this Convention how it would have looked if the Convention had thought proper to decline the invitation of the city of Philadelphia and resolved to hold its sessions at Harrisburg if some delegate from the city had offered on every occasion a motion that we should meet at Philadelphia.

Mr. President, I think that a due sense of the proprieties of this occasion and the object of the Convention should lead us to continue to hold our sessions in the place we first selected at the invitation of the authorities of this city.

The *PRESIDENT pro tem.* The question is on the motion to strike out "Harrisburg" and insert "Philadelphia."

Mr. TEMPLE. I withdraw that.

The *PRESIDENT pro tem.* Then the question is on the amendment of the delegate from Allegheny (Mr. Howard.)

Mr. HOWARD. Mr. President: I have listened to what I consider the very extraordinary speech of the delegate from Philadelphia (Mr. Hanna). It is well understood we came to Philadelphia as a matter of necessity. The primary reason for adjourning from Harrisburg was that the Legislature was to meet there on the first of January. No sooner had they fixed the place at Philadelphia than the same Philadelphia members moved to adjourn the Convention, and they did do it, and we lost over five weeks. Just as soon as they got the place fixed, very well; they must away at once. We staid here until the Legislature adjourned and vacated the capital. Then it was that we moved to go back to Harrisburg.

Mr. President, I know that I would meet fifty of my constituents at Harrisburg and have communication with them where I would meet one here in Spruce street, here in the lower corner of Philadelphia. That is the reason why I was willing to go back to Harrisburg, and when we knew the cause of our removal has been taken away. When we came here we expected that we certainly would have concluded our labors by the first of May. Now, we have run into July, and yet the delegate from Philadelphia is not satisfied. He wants to bring this body back perhaps to continue them here in the hot months of July and August for the purpose of deliberating, I suppose he calls it. Why we do nothing but fight; we do not deliberate. We have not had reason here for days; it has been a jangle and a brawl, where the President could not keep order; and that is one of the reasons that

has brought my mind to vote for an adjournment to Harrisburg. We are not deliberating, and if we continue here we shall botch our work, and it will be far better for ourselves and the people, more reputable for us, to adjourn until September. Take the advice of our friends throughout the Commonwealth. Let us return to Harrisburg in the fall and there complete our labors.

Mr. STEWART. I move to amend the amendment by striking out "the second Tuesday of September at Harrisburg" and inserting "the first Tuesday of September next."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin (Mr. Stewart) to the amendment of the delegate from Allegheny (Mr. Howard.)

Mr. STEWART. That is without saying anything about the place.

Mr. DE FRANCE. Mr. President: I am opposed to this motion of the delegate from Allegheny, because it adjourns our meeting from now until September. I have no objection to going to Harrisburg or going to any place else where we can get in a cooler position than we seem to have here; but it seems to me if we do now adjourn, that our main work is lost; the enemies of the Constitution, in my judgment, have succeeded. If we do not submit this Constitution until away on in 1874, I do not believe the people will agree to it at all; I believe they will oppose it. We met at Harrisburg on the twelfth day of last November, and what is the reason we did not stay there when it was cool and comfortable? Gentlemen alleged that the committees ought to report, that there was something which ought to be done, and we were to meet in the great city of Philadelphia, where the Declaration of Independence had been announced, where the Constitution of the United States had been made, and we were to work there and finish our work in a short time! How did we do it? As I said yesterday, we met here and we never sat one solitary Saturday until the other day. Not one solitary Saturday did we sit. We adjourned almost universally every Friday until the following Monday. We have not worked as we should have worked; and it is no hotter weather now than thousands of people work in in their offices. I am in favor, if we do not go to Harrisburg, of staying here or some other place that is convenient until we finish up our work,

and making arrangements for submitting it to the people, as we are bound to do.

Mr. President, let the men who are in favor of disobeying the voice of the united press of Pennsylvania take the responsibility.

Mr. BRODHEAD. We will take it.

Mr. DE FRANCE. Put it down that I am opposed to this, unalterably opposed to it; that I feel we are going directly against the wishes of our constituents.

Gentlemen say that they are not healthy. Who is more unhealthy in this Convention than I am? Any person? If there are such, let them go to their seaside cottages, let them go to the springs, let them spend their money; I have not got any to spend in that way.

How will it be, Mr. President, if we come back here next year? We shall have the siege of Troy reviewed fully; we shall have the *Eneid* reviewed; we shall have the whole history of Greece and Rome examined in the most erudite manner, and there will be a hundred of the most eloquent speeches ready in the delegates' pockets to be delivered here next fall when we re-assemble again. I am opposed to it. We shall certainly sit until next year if we go home now and come back in the fall. We can finish our work now in three or four weeks. What is there to do that men of sense could not do if they would agree and not talk, not gas so much, and spend the time of the Convention that way? What is there to do? We have the railroad report to go over; we have to fix the Legislature; and I believe that we can agree upon that now. We can agree to fix the number of the members, and then leave it to the Legislature, which we shall have to do in the end—that is, to district the State. It seems to me that will be what we shall have to do in the end.

Now, Mr. President, it does seem to me folly for us to go home, but all I wish to say is, let the men who favor it take the responsibility. They do not belong to any one particular party. There is nothing of party in it at all; but I say, whether ignorantly or wilfully or howsoever it may have been done, the enemies of this Constitution have gained a victory this morning, if they can carry out their programme to adjourn till next September or October. I have had my say and will now leave the question to its fate.

Mr. BOYD. Mr. President: I shall vote for the resolution that when we adjourn here to-day we shall adjourn to meet in

the city of Harrisburg in September next, and I desire to give my reason for this vote. In doing so I am not unmindful of the kindness of the citizens of Philadelphia in furnishing us this hall, and I am not unmindful of their kindness in other respects and their hospitality. I love the place and I dislike Harrisburg, and doubt whether it is fit for anything human to go to. [Laughter.] But inasmuch as we could not obtain an adjournment in consequence of the votes of our Philadelphia friends, I shall now do the next best thing that can be done. As it is manifest we can have no adjournment until September unless we go to Harrisburg, I shall therefore vote for Harrisburg now and all the time.

Mr. STEWART. Mr. President: In order to remove this question of some of its complication, I withdraw the amendment I offered, so that a vote may be taken directly on the amendment of the gentleman from Allegheny.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Allegheny, (Mr. Howard,) that when we adjourn to-day it be to meet in Harrisburg the second Tuesday of September.

Mr. CAMPBELL and Mr. DALLAS called for the yeas and nays, and they were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Baker, Bannan, Barclay, Beebe, Bigler, Bowman, Boyd, Brodhead, Broomall, Calvin, Cassidy, Curry, Elliott, Ellis, Funck, Gilpin, Green, Harvey, Hazzard, Hemphill, Howard, Hunsicker, Lamberton, Long, MacVeagh, Minor, Mitchell, Parsons, Patton, Reynolds, Ross, Sharpe, Stewart, Struthers, Van Reed and Walker—38.

NAYS.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bartholomew, Biddle, Black, Charles A., Brown, Buckalew, Bullitt, Campbell, Carey, Carter, Clark, Cochran, Corbett, Cuyler, Dallas, Darlington, De France, Dodd, Edwards, Fell, Finney, Fulton, Guthrie, Hanna, Hay, Kaine, Knight, Landis, Lawrence, Lear, Lilly, Littleton, MacConnell M'Clellan, Mann, Metzger, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, H. G., Smith, Henry W., Stanton, Tem-

ple, Wetherill, John Price, White, Harry, Worrel and Wright—56.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Church, Collins, Corson, Craig, Cronmiller, Curtin, Davis, Dunning, Ewing, Gibson, Hall, Heverin, Horton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Niles, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—39.

Mr. STEWART. I move to amend by striking out "Monday next," and inserting "the first Tuesday of September next."

Mr. LILLY. I hope gentlemen will not filibuster any more on this subject.

Mr. STEWART. I call for the yeas and nays on my amendment.

Mr. HUNSICKER. I second the call.

Mr. TEMPLE. I desire to make a motion to lay the whole subject on the table.

Mr. LILLY and Mr. BIDDLE called for the yeas and nays.

Mr. HUNSICKER. I call the previous question.

Mr. HANNA. I second the call.

The PRESIDENT *pro tem*. It requires eighteen gentlemen to rise in order to second the call for the previous question.

The call for the previous question was not seconded.

The PRESIDENT *pro tem*. The yeas and nays have been ordered on the amendment of the delegate from Franklin, (Mr. Stewart,) that when we adjourn, we adjourn to meet on the first Tuesday of September.

Mr. HARRY WHITE. I move to amend by inserting "Tuesday, the eighth day of July," and on that I call for the yeas and nays.

Mr. CARTER. I second the call.

Mr. CUYLER. I rise to a point of order. After the yeas and nays are ordered, it is not in order to offer a further amendment. The gentleman from Indiana is too late.

The PRESIDENT *pro tem*. The yeas and nays have been ordered on the amendment of the delegate from Franklin, and if the point of order is insisted upon, the Chair must rule the amendment of the delegate from Indiana out of order.

Mr. CUYLER. I do so insist.

The PRESIDENT *pro tem*. Then the Clerk will call the roll on the amendment of the delegate from Franklin.

The question being taken by yeas and nays, resulted, yeas forty-three, nays fifty-five, as follows :

Y E A S .

Messrs. Ainey, Armstrong, Baker, Bannan, Barclay, Bartholomew, Beebe, Bowman, Boyd, Brodhead, Broomall, Bullitt, Calvin, Cassidy, Corson, Curry, Curtin, Cuyler, Elliott, Ellis, Fell, Green, Hanna, Harvey, Hazzard, Hemphill, Hunsicker, Knight, Lamberton, Littleton, Long, MacVeagh, Minor, Mitchell, Parsons, Patton, Reynolds, Ross, Sharpe, Smith, H. G., Stanton, Stewart and Van Reed—43.

N A Y S .

Messrs. Achenbach, Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Brown, Buckalew, Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Kaine, Landis, Lawrence, Lear, Lilly, MacConnell, M'Clean, Mann, Metzger, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Struthers, Temple, Walker, Wetherill, Jno. Price, White, Harry, Worrell and Wright—55.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Church, Collins, Craig, Cronmiller, Davis, Dunning, Ewing, Hall, Heverin, Horton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—35.

Mr. BRODHEAD. I move to insert "on Tuesday, the eighth day of July, in the borough of Bethlehem."

Mr. HANNA. I suggest to make it "the Stockton House, Cape May." [Laughter.]

Mr. BRODHEAD. I call for the yeas and nays on my amendment.

Mr. STEWART. I second the call.

Mr. MACCONNELL. Let the amendment be read.

The CLERK. The resolution, if amended as proposed by the delegate from Northampton, (Mr. Brodhead,) would read :

"Resolved, That when this Convention adjourns to-day it will be to meet on the eighth day of July instant, in the borough of Bethlehem."

The yeas and nays were taken with the following result :

Y E A S .

Messrs. Ainey, Alricks, Bannan, Brodhead, Buckalew, Curtin, De France, Dodd, Ellis, Gibson, Green, Harvey, Hemphill, Howard, Hunsicker, Lamberton, Lear, MacConnell, Mitchell, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Reed, Andrew, Ross, Stanton, Stewart, Struthers, Van Reed and Walker—29.

N A Y S .

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Brown, Calvin, Campbell, Carey, Carter, Clark, Corbett, Corson, Curry, Cuyler, Dallas, Darlington, Edwards, Elliott, Fell, Finney, Fulton, Funck, Gilpin, Guthrie, Hanna, Hay, Hazzard, Kaine, Knight, Landis, Lawrence, Lilly, Littleton, Long, M'Clean, Mann, Metzger, Minor, Mott, Niles, Parsons, Patterson, D. W., Patton, Porter, Reynolds, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Temple, Wetherill, Jno. Price, White, Harry, Worrell and Wright—64.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Davis, Dunning, Ewing, Hall, Heverin, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Rooke, Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—40.

The PRESIDENT *pro tem*. The question recurs on the resolution.

Mr. STANTON. I move now that the Convention proceed to consider the article on the judiciary. ["No." "No."]

Mr. TEMPLE. That motion is not in order. There is a resolution pending.

The PRESIDENT *pro tem*. The question is on the resolution before the House.

Mr. HOWARD. I move an amendment to the pending resolution, "that when this Convention adjourns to-day it will be to

meet at Bedford, on Thursday, the 10th day of July, instant, and proceed to finish the work of this Constitution." On that I call for the yeas and nays.

The *PRESIDENT pro tem.* The yeas and nays are called by the delegate from Allegheny.

Mr. BRODHEAD. I second the call.

Mr. BROOMALL. Before the yeas and nays are ordered, inasmuch as the previous question will probably be soon called, I desire to move to strike out the words "at Bedford," and then I have no objection to the previous question.

The *PRESIDENT pro tem.* It is moved to amend the amendment so as to strike out "at Bedford."

Mr. AINEY. I move to strike out "Bedford" and insert "Allentown."

Mr. HOWARD. That is not in order.

The *PRESIDENT pro tem.* The question is on the amendment, of the delegate from Delaware to the amendment of the delegate from Allegheny to strike out "at Bedford."

Mr. HOWARD. I call for the yeas and nays.

Mr. LILLY. I rise to call the previous question.

Mr. BRODHEAD. I second the call.

Mr. DARLINGTON. It requires ten, I think.

The *PRESIDENT pro tem.* It requires eighteen to second the call for the previous question. Is the call sustained?

Messrs. Corbett, Jos. Baily, J. M. Baily, Broomall, Knight, Carter, Brown, Porter, J. Price Wetherill, Mott, Patton, Biddle, MacConnell, Guthrie, Kaine, Hanna, Corson, Simpson, Funck, Fell, H. W. Smith and Darlington rose.

The *PRESIDENT pro tem.* The call for the previous question is sustained. The question is, shall the main question be now put.

Mr. AINEY. Now I desire to ask, the call for the previous question having been sustained, if the main question be directed to be put, will it then be in order to make any future motion in relation to adjournment?

Mr. HARRY WHITE. Certainly it will.

Mr. MACVEAGH. Of course it will. The previous question will only require that a vote be taken on the motions already made.

The *PRESIDENT pro tem.* The Chair is compelled to state very reluctantly that, as he must conform in his rulings to the decision of the President of this body, he can allow no other amendments on the

subject of adjournment to be moved. The question is, shall the main question be now put.

Mr. HOWARD. On that question I call for the yeas and nays.

Mr. CORBETT. I second the call.

The yeas and nays were taken, and were as follow, viz:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baily, (Perry,) Bannan, Bartholomew, Biddle, Black, Charles A., Bowman, Broomall, Brown, Carter, Clark, Cochran, Corbett, Curtin, Cuyler, Darlington, Dodd, Edwards, Fell, Finney, Funck, Gibson, Guthrie, Hanna, Harvey, Hazzard, Howard, Knight, Lambertson, Landis, Lawrence, Lear, Lilly, Long, MacVeagh, M'Clean, Mann, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Reed, Andrew, Reynolds, Rooke, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Van Reed, Walker, Wetherill, John Price and Worrell—62.

NAYS.

Messrs. Armstrong, Bailey, (Huntingdon,) Baker, Boyd, Brodhead, Buckalew, Bullitt, Calvin, Campbell, Carey, Cassidy, Corson, Dallas, De France, Elliott, Ellis, Fulton, Gilpin, Green, Hay, Hunsicker, Kaine, Littleton, MacConnell, Metzger, Niles, Patterson, D. W., Ross, Temple and White, Harry—30.

So the main question was ordered to be now put.

ABSENT.—Messrs. Addicks, Andrews, Baer, Barclay, Bardsley, Beebe, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Davis, Dunning, Ewing, Hall, Hemphill, Heverin, Horton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, President—41.

The *PRESIDENT pro tem.* The question before the House is on the amendment of the gentleman from Delaware, to strike out "at Bedford," to the amendment of the gentleman from Allegheny on which the yeas and nays have been ordered.

The yeas and nays were taken.

Mr. BIGLER (when his name was called.) I am paired on all questions of

adjournment with the delegate from Chester (Mr. Hemphill.)

The call of the roll was concluded, with the following result :

Y E A S .

Messrs. Achenbach, Ainey, Armstrong, Bailly, (Perry,) Bannan, Barclay, Bartholomew, Biddle, Black, Charles A., Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Cassidy, Clark, Corbett, Corson, Cuyler, Dallas, Edwards, Elliott, Fell, Hanna, Harvey, Hay, Hunsicker, Kaine, Knight, Lamberton, Lear, Lilly, Littleton, Long, Mann, Metzger, Mott, Niles, Parsons, Patterson, D. W., Patton, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Temple, Van Reed, Walker, Wetherill, Jno. Price, White, Harry, Worrell and Wright—59.

N A Y S .

Messrs. Alricks, Bailey, (Huntingdon,) Baker, Beebe, Bowman, Brodhead, Campbell, Carey, Cochran, Curtin, Darlington, De France, Dodd, Ellis, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hazzard, Howard, Landis, Lawrence, MacConnell, MacVeagh, Minor, Mitchell, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Porter and Reed, Andrew—33.

So the amendment to the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Carter, Church, Collins, Craig, Cronmiller, Curry, Davis, Dunning, Ewing, Finney, Hall, Hemphill, Heverin, Horton, M'Camant, M'CLean, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

The *PRESIDENT pro tem.* The question now recurs on the amendment as amended, which will be read.

The *CLERK.* The resolution, if amended as proposed, will read :

Resolved, That when this Convention adjourns to-day it will be to meet on Thursday, the tenth instant, at ten o'clock A. M.

Mr. COCHRAN. What is the original section to which that is offered as a substitute?

The *PRESIDENT pro tem.* The original resolution was to meet on Monday next.

The question is now on the amendment just read.

Mr. MACCONNELL and Mr. PORTER called for the yeas and nays, and they were taken with the following result :

Y E A S .

Messrs. Ainey, Black, Chas. A., Broomall, Cassidy, Curtin, Cuyler, Dodd, Fell, Finney, Fulton, Hanna, Long, Mitchell, Niles, Parsons, Sharpe, Smith, Henry W., Stanton, White, Harry and Worrell—20.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bartholomew, Beebe, Biddle, Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Clark, Cochran, Corbett, Corson, Dallas, Darlington, De France, Edwards, Elliott, Ellis, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hay, Hazzard, Howard, Hunsicker, Kaine, Knight, Lamberton, Landis, Lawrence, Lear, MacConnell, M'CLean, Mann, Metzger, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Porter, Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, H. G., Stewart, Struthers, Temple, Van Reed, Walker and Wetherill, John Price—68.

So the amendment as amended was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Bowman, Carter, Church, Craig, Cronmiller, Curry, Davis, Dunning, Ewing, Hall, Hemphill, Heverin, Horton, Lilly, Littleton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Patterson, D. W., Pughe, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—45.

The *PRESIDENT pro tem.* The question now recurs on the original resolution.

Mr. BRODHEAD. I move to reconsider the vote just taken.

Mr. KAINE. That is not in order. We are acting under the previous question.

The *PRESIDENT pro tem.* The motion to reconsider is not in order. The call for the previous question has been sustained by the House, and we must proceed to vote upon the propositions before the House, when the previous question was ordered. The Clerk will now read

the original resolution, which is the pending question.

The CLERK read as follows:

Resolved, That when this Convention adjourns to-day it will be to meet on Monday next at ten o'clock A. M.

The yeas and nays were required by Mr. Temple and Mr. Beebe, and were as follows, viz:

YEAS.

Messrs. Alricks, Armstrong, Bailly, (Perry,) Black, Charles A., Broomall, Brown, Buckalew, Calvin, Carey, Carter, Cassidy, Clark, Cochran, Cuyler, Finney, Funck, Gibson, Gilpin, Guthrie, Hanna, Kaine, Knight, Lamberton, Landis, Lilly, Long, M'Clean, Mann, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Reed, Struthers, Temple, Walker, White, Harry, Worrell and Wright—45.

NAYS.

Messrs. Achenbach, Ainey, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bartholomew, Beebe, Biddle, Bowman, Boyd, Brodhead, Bullitt, Campbell, Corbett, Corson, Curtin, Dallas, Darlington, De France, Edwards, Elliott, Ellis, Fulton, Green, Harvey, Hay, Hazzard, Howard, Hunsicker, Lawrence, Lear, Littleton, MacConnell, Minor, Mitchell, Mott, Niles, Patterson, T. H. B., Patton, Reed, Andrew, Reynolds, Ross, Smith, H. G., Stewart, Van Reed and Wetherill, John Price—47.

So the resolution was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ewing, Fell, Hall, Hemphill, Heverin, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, William H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

Mr. CAMPBELL. I offer the following resolution:

Resolved, That when this Convention adjourns it will be until Saturday morning at ten o'clock A. M.

Mr. CUYLER. I move to indefinitely postpone that resolution.

Mr. HOWARD. I move to amend it.

The PRESIDENT *pro tem*. The first question will be whether the Convention

will order the resolution to a second reading.

The motion was not agreed to, the ayes being thirty, less than a majority of a quorum.

ORDER OF BUSINESS.

Mr. LILLY. I move that we proceed to the consideration of the article reported by the Committee on the Judiciary.

Mr. HOWARD. I desire to offer a resolution.

The PRESIDENT *pro tem*. Well, sir, you are heartily at liberty to do so. [Laughter.]

ADJOURNMENT TO TUESDAY.

Mr. HOWARD. I now move that when this Convention adjourn to-day, it be to meet in Harrisburg on Tuesday next at ten o'clock, and I call for the yeas and nays on that question.

Mr. HARRY WHITE. I move to amend, by striking out Harrisburg.

Mr. BUCKALEW. I rise to a question of order.

The PRESIDENT *pro tem*. What is the question of order?

Mr. BUCKALEW. It is that the gentleman from Allegheny will be obliged to draw up a resolution in writing and submit it. He cannot by a mere motion, off-hand, change the rule.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

SUMMER RECESS.

Mr. HOWARD. I will submit it in writing.

Mr. AINEY. I offer the following resolution:

Resolved, That this Convention will take a recess until Wednesday, the second Tuesday of September next, as soon as the article on the judiciary shall have passed second reading.

On the question of ordering the resolution to a second reading and proceeding to its consideration, a division was called for, and there were thirty-six ayes.

Mr. AINEY. There is a large number of members not voting, and I therefore call for the yeas and nays.

Mr. BOYD. I second the call.

Mr. CORBETT. I rise to a question of order. This is the same proposition that has been voted down, only changing the word "adjourn" to "recess."

SEVERAL DELEGATES. It fixes a different day.

The *PRESIDENT pro tem.* The Chair would like to sustain the point of order, but he cannot.

Mr. AINEY. The second Wednesday in September will be the tenth of the month.

The yeas and nays were required by Mr. Ainey and Mr. Boyd, and were as follow, viz:

YEAS.

Messrs. Ainey, Armstrong, Baker, Banan, Barclay, Bartholomew, Beebe, Bowman, Boyd, Brodhead, Broomall, Buckalew, Bullitt, Calvin, Cassidy, Corson, Curtin, Cuyler, Elliott, Green, Harvey, Hazard, Hunsicker, Knight, Lamberton, Littleton, Minor, Mitchell, Mott, Parsons, Patton, Reynolds, Sharpe, Smith, H. G., Stanton, Van Reed and Walker—37.

NAYS.

Messrs. Achenbach, Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Brown, Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hanna, Hay, Howard, Kaine, Landis, Lawrence, Lear, Lilly, Long, MacConnell, M'CLean, Mann, Metzger, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Struthers, Temple, Wetherill, Jno. Price, White, Harry and Wright—52.

So the resolution was not ordered to a second reading.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Davis, Dunning, Ellis, Ewing, Fell, Hall, Hemphill, Heverin, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Runk, Russell, Smith, Wm. H., Stewart, Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, *President*—44.

ADJOURNMENT TO TUESDAY.

Mr. HARRY WHITE. I offer the following resolution:

Resolved, That when the Convention adjourns to-day, it be to meet on Tuesday next at ten o'clock.

Mr. H. G. SMITH. I rise to a point of order. That has been decided already.

Mr. TEMPLE. It is a different day.

The *PRESIDENT pro tem.* The resolution is in order. The question is on proceeding to its second reading and consideration.

The question being put, the ayes were forty-seven.

Mr. H. G. SMITH. I call for the yeas and nays on proceeding to the second reading.

Mr. CALVIN. I second the call.

The *PRESIDENT pro tem.* The Clerk will call the roll.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Armstrong, Black, Charles A., Broomall, Brown, Buckalew, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Corson, Cuyler, Darlington, Dodd, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hanna, Howard, Kaine, Lamberton, Landis, Lilly, Long, M'CLean, Metzger, Niles, Palmer, G. W. Palmer, H. W., Patterson, D. W., Porter, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Walker, White, Harry, Worrell and Wright—48.

NAYS.

Messrs. Achenbach, Ainey, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Banan, Barclay, Bartholomew, Beebe, Biddle, Bowman, Boyd, Brodhead, Bullitt, Calvin, Corbett, Dallas, De France, Edwards, Elliott, Ellis, Harvey, Hay, Hazard, Heverin, Hunsicker, Knight, Lawrence, Lear, Littleton, MacConnell, Mann, Minor, Mitchell, Mott, Patterson, T. H. B., Patton, Reed, Andrew, Reynolds, Ross, Smith, H. G., Stewart, Van Reed and Wetherill, John Price—44.

So the question was determined in the affirmative.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dunning, Ewing, Fell, Hall, Hemphill, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

Mr. HARRY WHITE. I call for the previous question on this resolution.

The PRESIDENT *pro tem.* There has been a motion carried for reading it a second time; but in the meantime the previous question is called before the resolution is before the Convention.

Mr. HARRY WHITE. Let it be read a second time. I withdraw the call.

The resolution was read the second time and considered.

Mr. HOWARD. I move an amendment, to insert before the word "Tuesday" the words "at Harrisburg," so as to read:

"To meet at Harrisburg on Tuesday next at ten o'clock."

Mr. NILES. I rise to a point of order. The amendment is not germane to the resolution pending. It changes the place of meeting.

The PRESIDENT *pro tem.* The Chair cannot so decide.

Mr. HARRY WHITE. I submit that I called the previous question before the gentleman from Allegheny was recognized.

The PRESIDENT *pro tem.* The gentleman from Allegheny had the floor. The Chair would like to sustain the call for the previous question, but he was compelled to recognize the gentleman from Allegheny.

Mr. HARRY WHITE. Then I call the previous question now.

The PRESIDENT *pro tem.* Do eighteen gentlemen rise to sustain the call?

Messrs. Hanna, Kaine, Temple, C. A. Black, Simpson, Metzger, Lilly, Broomall, G. W. Palmer, Mott, Fulton, Guthrie, Brown, Struthers, Carter, Porter, Gilpin, Joseph Bailly, Cochran, Clark, Carey and Edwards rose.

The PRESIDENT *pro tem.* The call for the previous question is sustained. The question is, shall the main question be now put.

Mr. HUNSICKER. On that I call for the yeas and nays.

Mr. HOWARD. I second the call.

Mr. MACVEAGH. I rise to a parliamentary inquiry. If the main question be not ordered to be put, then the question will be out of the House for the day.

The PRESIDENT *pro tem.* The Chair will not decide that question until it arises.

The yeas and nays were taken, and were as follow, viz:

YEAS.

Messrs. Alricks, Bailly, (Perry,) Bartholomew, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Broomall, Brown, Bullitt, Carey, Clark, Cochran, Corson,

Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hazzard, Heverin, Howard, Kaine, Knight, Lambertson, Lilly, Landis, Littleton, Long, M'Cleane, Mann, Metzger, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Porter, Rooke, Sharpe, Simpson, Stewart, Struthers, Temple, Walker, Wetherill, Jno. Price, White, Harry and Wright—53.

NAYS.

Messrs. Achenbach, Ainey, Armstrong, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Brodhead, Buckalew, Calvin, Campbell, Carter, Cassidy, Corbett, Cuyler, Dallas, Darlington, De France, Elliott, Ellis, Hanna, Hay, Hunsicker, Lawrence, MacConnell, MacVeagh, Mitchell, Patton, Reed, Andrew, Reynolds, Ross, Smith, H. G., Smith, Henry W., Stanton, Van Reed and Worrell—35.

So the main question was ordered to be now put.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dodd, Dunning, Ewing, Fell, Hall, Hemphill, Horton, Lear, M'Camant, M'Culloch, M'Murray, Mantor, Minor, Newlin, Parsons, Patterson, D. W., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—45.

The PRESIDENT *pro tem.* The question is now on the amendment of the gentleman from Allegheny, to insert "Harrisburg."

Mr. HOWARD. On that question I call for the yeas and nays.

Mr. BOYD. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Beebe, Boyd, Brodhead, Calvin, De France, Ellis, Funck, Green, Harvey, Hazzard, Howard, Hunsicker, Lambertson, MacConnell, MacVeagh, M'Cleane, Mitchell, Palmer, H. W., Patterson, T. H. B., Ross, Stewart, Van Reed and Walker—25.

NAYS.

Messrs.—Achenbach, Armstrong, Bailey, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bartholomew, Black, Chas. A., Bowman, Broomall, Brown,

Buckalew, Bullitt, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Corbett, Corson, Cuyler, Dallas, Darlington, Dodd, Edwards, Elliott, Finney, Fulton, Gilpin Guthrie, Hanna, Hay, Heverin, Kaine, Knight, Landis, Lear, Lilly, Littleton, Long, Mann, Minor, Mott, Niles, Palmer, G. W., Patterson, D. W., Patton, Porter, Reed, Andrew, Reynolds, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Wetherill, John Price, White, Harry, Worrell and Wright—63.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Biddle, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dunning, Ewing, Fell, Gibson, Hall, Hemphill, Horton, Lawrence, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, H. G., Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—45.

The *PRESIDENT pro tem.* The question now recurs on the resolution that when we adjourn, it be to meet on Tuesday next.

Mr. CORBETT and Mr. CARTER called for the yeas and nays, and they were taken with the following result :

YEAS.

Messrs. Alricks, Armstrong, Baily, (Perry,) Black, Charles A., Broomall, Brown, Buckalew, Carey, Carter, Cassidy, Clark, Cochran, Corson, Darlington, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hanna, Kaine, Lamberton, Landis, Lilly, Littleton, Long, M'Clean, Mann, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Porter, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Walker, White, Harry and Worrell—45.

NAYS.

Messrs. Achenbach, Ainey, Bailey, (Huntingdon,) Baker, Bannan, Barolay, Bartholomew, Beebe, Biddle, Bowman, Boyd, Brodhead, Bullitt, Calvin, Campbell, Corbett, Curtin, Dallas, De France, Dodd, Edwards, Elliott, Ellis, Green, Harvey, Hay, Hazzard, Heverin, Howard, Hunsicker, Knight, Lawrence, MacConnell, Minor, Mitchell, Mott, Patterson, T. H. B., Reed, Andrew, Reynolds,

Ross, Smith, H. G., Stewart, Van Reed and Wetherill, John Price—44.

So the resolution was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Cuyler, Davis, Dunning, Ewing, Fell, Hall, Hemphill, Horton, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—44.

PROPOSED ADJOURNMENT.

Mr. BARTHOLOMEW. I move that the Convention do now adjourn.

Mr. GILPIN. I second the motion.

Mr. D. W. PATTERSON. On that motion I call for the yeas and nays.

Mr. J. PRICE WETHERILL. I second the call.

The *PRESIDENT pro tem.* The question is on the motion of the delegate from Schuylkill.

Mr. LILLY. The motion does not appear to be understood. As I understand, it will adjourn us over until ten o'clock on Tuesday next, and it is not simply to take a recess until the afternoon.

Mr. HUNSICKER. I rise to a question of order. The motion is not debatable.

Mr. LILLY. I have the right to ask what the question is, and the gentleman has no business to interfere. He is out of order in doing so.

The *PRESIDENT pro tem.* The Chair will answer any proper question that may be put to him.

Mr. HUNSICKER. I might make another point, that the gentleman from Carbon is not in his place.

The *PRESIDENT pro tem.* If we adjourn now under this motion it will be until Tuesday next at ten o'clock.

The question was taken by yeas and nays with the following result :

YEAS.

Messrs. Ainey, Alricks, Baily, (Perry,) Baker, Bannan, Bartholomew, Broomall, Brown, Buckalew, Bullitt, Cochran, Corbett, Corson, Fulton, Gilpin, Hanna, Harvey, Kaine, Lamberton, Littleton, Long, M'Clean, Palmer, G. W., Palmer, H. W., Porter, Sharpe, Smith, Henry W., Stewart, Temple and Worrell—30.

N A Y S.

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Barclay, Beebe, Biddle, Bowman, Boyd, Brodhead, Calvin, Campbell, Darlington, De France, Dodd, Edwards, Elliott, Finney, Funck, Green, Guthrie, Hay, Hazzard, Howard, Hunsicker, Landis, Lilly, MacConnell, Mann, Metzger, Minor, Mitchell, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, H. G., Stanton, Struthers, Van Reed, Walker, Wetherill, Jno. Price and White, Harry—48.

So the motion to adjourn was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, Charles A., Black, J. S., Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Dunning, Ellis, Ewing, Fell, Gibson, Hall, Hemphill, Heverin, Horton, Knight, Lawrence, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Parsons, Pughe, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—55.

PUBLICATION OF DEBATES.

MR. BRODHEAD. I offer the following resolution:

Resolved, That the printing of the Debates of this Convention be discontinued from this date.

The **PRESIDENT** *pro tem.* put the question on proceeding to the second reading of the resolution and declared that the yeas appeared to have it.

MR. BRODHEAD. I call for the yeas and nays.

MR. HOWARD. I second the call. If we are to continue in session and are ever to close our proceedings, we must discontinue the publication of the Debates.

MR. LILLY. The gentleman has a perfect right to call for the yeas and nays; but I appeal to his sense of decency whether he ought to do so and thus waste time.

MR. NILES. I trust I shall be permitted to say just two words. ["Go on."] I suppose the Convention understands very well that they have made a contract with the Printer and with the Reporter, and if we discontinue the publication of the Debates, we are giving them so much; that is all.

The yeas and nays were required by Mr. Brodhead and Mr. Howard, and were as follow, viz:

Y E A S.

Messrs. Ainey, Brodhead, Broomall, Corson, De France, Funck, Green, Howard, Lear, Littleton, Long, MacConnell, M'CLean, Mitchell, Palmer, G. W., Patterson, T. H. B., Porter, Reynolds, Ross, Simpson, Smith, H. G. and Van Reed—22.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Biddle, Bowman, Boyd, Brown, Buckalew, Calvin, Campbell, Carter, Clark, Cochran, Corbett, Dallas, Darlington, Dodd, Edwards, Elliott, Finney, Fulton, Gilpin, Guthrie, Harvey, Hazzard, Hunsicker, Kaine, Knight, Lambertson, Landis, Lilly, Mann, Metzger, Minor, Mott, Niles, Palmer, H. W., Patterson, D. W., Patton, Rooke, Sharpe, Smith, Henry W., Stanton, Stewart, Struthers, Walker, Wetherill, Jno. Price, White, Harry and Worrell—53.

So the resolution was not adopted.

ABSENT.—Messrs. Addicks, Andrews, Baer, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Bullitt, Carey, Cassidy, Church, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Davis, Dunning, Ellis, Ewing, Fell, Gibson, Hall, Hanna, Hay, Hemphill, Heverin, Horton, Lawrence, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Russell, Smith, Wm. H., Temple, Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—58.

RECESS.

MR. J. M. BAILLY. I move that the Convention now take a recess until three o'clock P. M.

The motion was agreed to, and (at twelve o'clock and fifty 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 **PRESIDENT** *pro tem.* There is not a quorum present.

Mr. HUNSICKER. I move that the Sergeant-at-Arms be dispatched after the absentees.

Mr. J. M. BAILEY. Let the roll be called.

The PRESIDENT *pro tem*. The Clerk will call the roll.

On the call of the roll fifty-three delegates answered to their names.

Mr. HARRY WHITE. There being no quorum present, I move that the Convention do now adjourn.

Mr. LAWRENCE. I am not surprised that the gentleman should make that motion.

Mr. HARRY WHITE. I am quite as anxious to stay here as the gentleman from Washington, and quite as attentive to my duties. I will allow no slur coming from such a source.

Mr. HUNSICKER. I rise to a point of order. There is nothing before the House, and therefore discussion is not in order.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

Mr. PATTON. I hope we shall not adjourn. If we wait a few moments, we shall have a quorum here—

Mr. HARRY WHITE. I hope we shall adjourn. I have moved an adjournment, because I am satisfied that there is an effort here to adjourn over until fall, and if we adjourn to-day we ought to adjourn to meet on next Tuesday.

The PRESIDENT *pro tem*. The question is on the motion to adjourn.

Mr. HARRY WHITE. On that I call for the yeas and nays.

Mr. TEMPLE. I second the call.

The yeas and nays were taken, and were as follow, viz :

YEAS.

Messrs. Baily. (Perry,) Bailey, (Huntingdon,) Black, Charles A., Brown, Campbell, Carter, Clark, De France, Edwards, Fulton, Gibson, Gilpin, Guthrie, Kaine, Lilly, MacConnell, Mann, Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Simpson, Smith, Henry W., Temple, Wetherill, J. Price, White, Harry and Worrell—27.

NAYS.

Messrs. Achenbach, Ainey, Armstrong, Baker, Beebe, Bigler, Boyd, Brodhead, Broomall, Buckalew, Calvin, Corson, Dallas, Darlington, Elliott, Green, Hanna, Harvey, Hay, Hazzard, Hunsicker, Knight, Lawrence, Long, M'Clellan, Minor,

Mitchell, Mott, Niles, Patton, Reynolds, Ross, Sharpe, Stewart, Struthers, Van Reed, Walker and Wetherill, J. M.—38.

So the Convention refused to adjourn.

ABSENT. — Messrs. Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Cochran, Collins, Corbett, Craig, Cronmiller, Curry, Curtin, Cuyler, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Finney, Funck, Hall, Hemphill, Heverin, Horton, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer G. W., Palmer, H. W., Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John B., Rooke, Runk, Russell, Smith, H. G., Smith, Wm. H., Stanton, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, President—72.

Mr. TEMPLE. I move that the Convention now proceed to the consideration of the article on the judiciary.

Mr. CAMPBELL. I second the motion.

Mr. SIMPSON. There is not a quorum here.

Mr. STRUTHERS. I offer the following resolution.

The PRESIDENT *pro tem*. There is not a quorum present, and no business is in order.

Mr. T. H. B. PATTERSON. I move then that we adjourn for want of a quorum.

Mr. HUNSICKER. I rise to a point of order. We have just voted on that very question.

Mr. DALLAS. I ask for a call of the House if that motion is not in order.

The PRESIDENT *pro tem*. There can be nothing done but to send the Sergeant-at-Arms for absent members or adjourn.

Mr. DALLAS. I ask for a call of the House.

Mr. CORSON. We have had a call.

Mr. DALLAS. Very well; let us have another.

The PRESIDENT *pro tem*. It is moved that the Sergeant-at-Arms be directed to request the attendance of absent members.

Mr. HARRY WHITE. I move to amend, by adding "and bring them to the Convention next Tuesday."

The PRESIDENT *pro tem*. It is moved that the Sergeant-at-Arms will be dispatched for absent delegates.

Mr. HARRY WHITE. I move to amend, by adding "and that he bring them to the

Convention on next Tuesday at ten o'clock;" and I call for the yeas and nays on that motion.

The PRESIDENT *pro tem*. It is moved to amend the resolution, by inserting "bring them before the Convention next Tuesday at ten o'clock."

Mr. DARLINGTON. I rise to a point of order, that when the House is about to direct its officer to execute its process and bring in members, it is not in order to make that returnable at a future day.

The PRESIDENT *pro tem*. The Chair sustains the point of order. The Clerk reports that there is now a quorum present.

Mr. HARRY WHITE. I ask leave to make an explanation. ["No." "No."]

The PRESIDENT *pro tem*. The delegate can have leave to explain if no objection be made. He will proceed.

Mr. HARRY WHITE. Mr. President: I merely desire, in a most respectful manner, to call attention to the fact that a resolution a few weeks ago was passed directing the Sergeant-at-Arms to take absent members in custody and bring them before the Convention at a subsequent session of the body. I merely call the attention of the Chair to that as a matter of precedent.

Mr. BROOMALL. The point of order was not raised; otherwise it could not have been done.

The PRESIDENT *pro tem*. There is a quorum of members now present, as the Clerk reports to the Chair after actual count.

Mr. STRUTHERS. I offer the following resolution—

Mr. D. W. PATTERSON. Is that in order without leave?

The PRESIDENT *pro tem*. Resolutions are in order. When the Convention took a recess the call was resting with resolutions, and we adjourned on that order. The resolution will be received and read.

The resolution was read as follows:

Resolved, That when this Convention adjourns to-day it will adjourn to meet on the third Tuesday of September, at ten o'clock. A. M.

Mr. HARRY WHITE. I raise a question of order.

The PRESIDENT *pro tem*. What order will the House take on the resolution? ["Second reading."] The Chair will state the question then, and the point of order may be raised. What order will the Convention take on the resolution? ["Second reading."]

Mr. HARRY WHITE. Now I rise to a question of order. It is this: That this morning, in a full Convention, a resolution was passed that when the Convention adjourn to-day it do adjourn to meet on next Tuesday. Now, less than a quorum being present, that resolution cannot be rescinded.

The PRESIDENT *pro tem*. There is a quorum present now.

Mr. HARRY WHITE. I ask for a call of the House.

SEVERAL DELEGATES. Second reading of the resolution.

The PRESIDENT *pro tem*. Will the House proceed to the second reading of the resolution offered by the gentleman from Warren?

Mr. MANN. I rise to a question of order, that the House having passed on that question, it is not in order to consider it in any other way except by reconsideration. It is not in order, the House having passed on that proposition, to receive a proposition of this kind again to-day. A majority can reconsider the vote of this morning, but it is not in order to proceed with this proposition.

The PRESIDENT *pro tem*. A motion was made this morning and voted down that when we adjourn to-day it be to meet on the second Tuesday of September. The resolution now pending is to meet on the third Tuesday of September. It is a different day, and the Chair cannot rule that it is out of order.

Mr. TEMPLE. I ask for a call of the House.

The PRESIDENT *pro tem*. A call of the House is demanded. The Clerk will call the roll of delegates to see whether a quorum is present.

Mr. MANN. I should like to ask the Chair a question. If the House now decides to adjourn will it then be in order to offer a resolution upon this subject that we meet next week?

The PRESIDENT *pro tem*. The Chair has already decided that this resolution is in order, and that if delegates are not satisfied with it they have the privilege of voting it down.

Mr. MANN. Yes, sir; but there is no use in voting it down if it can be offered continuously.

Mr. BUCKALEW. I desire to suggest to the gentleman from Philadelphia that he can accomplish the same object as having a call of the roll by calling for the yeas and nays on the resolution.

Mr. TEMPLE. I submit that the same result will not be arrived at.

Mr. STRUTHERS. When it is known to the Chair that there is a quorum here where is the propriety of calling the roll? The object of the gentlemen who desire the roll called is now apparent. Sundry of them are slipping off in order to leave the House without a quorum. I move that the doors be closed in order to prevent any more getting away, and that we then proceed to consider the resolution pending.

The PRESIDENT *pro tem*. The Chair cannot resist a call of the House. The Chair will direct that the doors be closed in order to prevent gentlemen getting away, and that the Sergeant-at-Arms be sent after those who have left.

Mr. KAINE. If I may be allowed to suggest anything to the President, I would state that the Sergeant-at-Arms cannot be directed to arrest members without an order of the House.

The PRESIDENT *pro tem*. Certainly.

Mr. KAINE. And while we are without a quorum no such order can be made.

The PRESIDENT *pro tem*. We had a quorum when the call of the House was made.

Mr. KAINE. That can be ascertained by having a call of the House, and if that is not demanded I demand it.

Mr. DALLAS. It has been ordered.

The PRESIDENT *pro tem*. The motion is to adjourn, on which the yeas and nays have been ordered.

The question being taken by yeas and nays resulted, yeas twenty-seven, nays thirty-eight, as follows:

The CLERK proceeded to call the roll.

Mr. HUNSICKER. Several delegates are standing outside for the purpose of leaving the House without a quorum.

Mr. HARRY WHITE. I raise the point of order that the gentleman has no right to reflect upon delegates.

Mr. STRUTHERS. I understood that the door was to be closed; that the Sergeant-at-Arms was to be ordered to close the doors and see that no gentlemen passed out.

The PRESIDENT *pro tem*. The Clerk will resume the call of the roll.

The CLERK resumed and concluded the call of the roll, and the following members were ascertained to be present:

Messrs. Ainey, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown,

Buckalew, Calvin, Campbell, Clark, Corson, Curtin, Dallas, Darlington, De France, Elliott, Fulton, Gibson, Gilpin, Green, Guthrie, Hanna, Harvey, Hay, Hazzard, Hunsicker, Kaine, Knight, Lawrence, Lilly, Long, MacConnell, M'Clellan, Mann, Metzger, Minor, Mitchell, Mott, Niles, Patterson, D. W., Patton, Porter, Reed, Andrew, Reynolds, Sharpe, Simpson, Smith, Henry W., Stewart, Struthers, Van Reed, Walker, Wetherill. J. M., Wetherill, John Price, White, Harry and Worrell -62.

The PRESIDENT *pro tem*. Sixty-two delegates answer to their names. There is not a quorum present.

Mr. BROOMALL. I call for the Clerk to read the names of those who answered the call a few minutes ago and who are not present now.

Mr. HARRY WHITE. I object to that as being irregular.

The PRESIDENT *pro tem*. The Chair must state the question before the point is raised. It is moved that the names of those who answered to their names before and are absent now, be called.

Mr. BROOMALL. What I desire is information. I call upon the Clerk to read the names of those who answered the call a few moments ago and have not answered to this one. It is for information.

Mr. KAINE. I submit that the gentleman has no right to make a request of that kind.

The PRESIDENT *pro tem*. The gentleman from Delaware can come to the desk and examine the roll for himself.

Mr. BIGLER. Mr. President—

Mr. HARRY WHITE. I move that the Convention do now adjourn.

Mr. WORRELL. I second the motion.

Mr. HARRY WHITE. And on that I call for the yeas and nays.

Mr. DARLINGTON. The gentleman is out of order. The delegate from Clearfield is on the floor.

Mr. BIGLER. I rose for the purpose of making the only motion that is in order. I desire to say in this connection that although it may be possible to scrape up a mere quorum, the House would be too small a body for the important business which I know is impending; and I think, although it is severe on some of us, that we had better adjourn. I therefore make the motion that the Convention do now adjourn.

The PRESIDENT *pro tem*. The question is on the motion of the gentleman from

Clearfield, that the Convention do now adjourn.

Mr. BIGLER and Mr. REYNOLDS called for the yeas and nays.

Mr. DALLAS. I desire to say a word in explanation of my vote. I shall vote "nay" on the question of adjournment because I believe that a quorum is practically present.

Mr. CURTIN. Mr. President: The delegate from Washington (Mr. Hazzard) suggests a reason why we should stay here, and that the delinquents should be known—

The PRESIDENT *pro tem*. Debate is not in order. The Clerk will call the roll on the motion to adjourn.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Chas. A., Brown, Campbell, Clark, De France, Fulton, Gibson, Guthrie, Kaine, Lilly, MacConnell, Mann, Metzger, Patterson, D. W., Porter, Reed, Andrew, Rooke, Simpson, Wetherill, Jno. Price, White, Harry and Worrell—24.

N A Y S .

Messrs. Ainey, Armstrong, Baker, Beebe, Biddle, Boyd, Brodhead, Broomall, Buckalew, Calvin, Corson, Curtin, Dallas, Darlington, Elliott, Finney, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Howard, Hunsicker, Knight, Lawrence, Littleton, Long, ^{at Clear} hell, Mott, Niles, Patton, Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Struthers, Van Reed, Walker and Wetherill, J. M.—42.

ABSENT.—Messrs. Achenbach, Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Bullitt, Carey, Carter, Cassidy, Church, Cochran, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Edwards, Ellis, Ewing, Fell, Funck, Hall, Hemphill, Heverin, Horton, Lamberton, Landis, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Minor, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Runk, Russell, Smith, Wm. H., Stanton, Temple, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—67.

The PRESIDENT *pro tem*. The vote stands yeas twenty-four, nays forty-two, making sixty-six in all. There is not a quorum voting; but the Chair is compelled to state to the House that the delegate from Crawford (Mr. Minor) was in the hall and refused to vote, and the Chair feels obliged to count him.

Mr. MINOR. I am paired on this subject of adjournment with another member, and therefore I cannot vote.

Mr. BROOMALL. But the gentleman is to be counted to make a quorum.

The PRESIDENT *pro tem*. He is here, and it makes a quorum.

Mr. NILES. And he has no right to pair either.

Mr. CAMPBELL. Is it in order now to move to proceed to the consideration of the article on the judiciary? If it is, I make that motion.

The PRESIDENT *pro tem*. Resolutions are in order, and when we got into the little trouble we have just passed through a motion was pending to proceed to the second reading of the resolution offered by the delegate from Warren (Mr. Struthers.)

Mr. HARRY WHITE. I move to indefinitely postpone that subject, and I call for the yeas and nays on that motion.

Mr. DARLINGTON. I rise to a point of order. A motion to postpone a motion to consider a resolution cannot be in order.

The PRESIDENT *pro tem*. Not until it is before the House. The question is on proceeding to the second reading and consideration of the resolution.

Mr. HARRY WHITE. On that question I ask for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

The yeas and nays were ordered.

Mr. HARRY WHITE. I renew the motion to indefinitely postpone.

SEVERAL DELEGATES. That is not in order.

The PRESIDENT *pro tem*. The yeas and nays will be taken on proceeding to the second reading and consideration of the resolution offered by the gentleman from Warren (Mr. Struthers.)

The CLERK proceeded to call the roll.

Mr. H. G. SMITH (when his name was called.) I vote "no," because I do not want to see this question decided in a House as small as this.

The result was announced as follows:

Y E A S .

Messrs. Ainey, Armstrong, Baker, Beebe, Bigler, Boyd, Brodhead, Broomall,

Buckalew, Calvin, Corson, Curtin, Cuyler, Darlington, Elliott, Green, Hanna, Harvey, Hazzard, Hunsicker, Knight, Mitchell, Mott, Patton, Reynolds, Sharpe, Stewart, Struthers, Van Reed, Walker and Wetherill, J. M.—31.

N A Y S .

Messrs. Achenbach, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Brown, Campbell, Clark, Corbett, Dallas, De France, Edwards, Finney, Fulton, Gibson, Gilpin, Guthrie, Hay, Howard, Lawrence, Lilly, Littleton, Long, MacConnell, M'CLean, Mann, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, H. G., Smith, Henry W., Temple, Wetherill, Jno. Price, White, Harry and Worrell—39.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S. Bowman, Bullitt, Carey, Carter, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Funck, Hall, Hemphill, Heverin, Horton, Kaine, Lamberton, Landis, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Runk, Russell, Smith, Wm. H., Stanton, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—63.

Mr. CORBETT. To save filibustering from this until six o'clock, I move that the Convention do now adjourn.

Mr. MANN. I hope, just for variety, that we work for half an hour. [Laughter.]

Mr. BUCKALEW. It must be perfectly apparent to everybody that we can do nothing if we remain here.

Mr. BOYD. I call for the yeas and nays on that motion.

Mr. MITCHELL. I second the call.

The yeas and nays were taken, and were as follow, viz :

Y E A S .

Messrs. Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, C. A., Brodhead, Broomall, Brown, Buckalew, Campbell, Clark, Corbett, Cuyler, Dallas, Darlington, De France, Edwards, Elliott, Finney, Fulton, Gibson, Gilpin, Green, Guthrie, Harvey, Hay, Howard, Lilly, Long, MacConnell, Mann, Mitchell, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Reed, Andrew, Sharpe, Simpson, Smith, Henry W., Stewart, Temple, Wetherill, Jno. Price, White, Harry and Worrell—48.

N A Y S .

Messrs. Achenbach, Ainey, Baker, Beebe, Boyd, Calvin, Corson, Curtin, Hanna, Hunsicker, Knight, Lawrence, Littleton, M'CLean, Reynolds, Smith, H. G., Struthers, Van Reed, Walker and Wetherill, J. M.—20.

ABSENT.—Messrs. Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S. Bowman, Bullitt, Carey, Carter, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Funck, Hall, Hazzard, Hemphill, Heverin, Horton, Kaine, Lamberton, Landis, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Ross, Runk, Russell, Smith, Wm. H., Stanton, Turrell, Wherry, White, David N., White, J. W. F., Woodward Wright and Meredith, *President*—65.

So the motion was agreed to; and (at four o'clock and nine minutes P. M.) the Convention adjourned until Tuesday morning, July eighth, at ten o'clock.

ONE HUNDRED AND THIRTY-FIFTH DAY.

TUESDAY, July 8, 1873.

The Convention met at ten o'clock A. M., Hon. John H. Walker, President *pro tempore*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of the proceedings of Thursday last was read.

Mr. J. M. BAILEY. I observe in the reading of the Journal by the Clerk that he has me recorded as seconding a call for the previous question. I did not, and never in this Convention will, second a call for a previous question; and if the Clerk will examine the vote he will find that I voted in the negative on the question "shall the main question be now put?"

The PRESIDENT *pro tem*. The mistake probably arose from the fact that the delegate from Huntingdon was standing at the time. The question was asked whether the call for the previous question was seconded. Of course it is impossible for the Clerk to prevent an error if in a case like that gentlemen are upon their feet. All who stand must be supposed to be seconding the call for the previous question.

Mr. J. M. BAILEY. I wish the record to now show that I did not rise for the purpose of seconding the call for the previous question.

The PRESIDENT *pro tem*. The record will be so made.

Mr. HUNSICKER. I find that a similar error exists with reference to myself. I am recorded as having seconded a call for the previous question. I did not rise to second that call, and on the question "shall the main question be now put" I voted in the negative. I desire that the record shall show this fact.

The PRESIDENT *pro tem*. The record will be corrected in that particular.

The Journal, as thus corrected, was approved.

LEAVES OF ABSENCE.

Mr. BIDDLE asked and obtained leave of absence for Mr. Mitchell for a few days from and including to-day.

Mr. DEFRANCE asked and obtained leave of absence for Mr. Dodd for a few days from to-day.

Mr. ARMSTRONG asked and obtained leave of absence for Mr. Campbell for to-morrow.

Mr. LAWRENCE asked and obtained leave of absence for Mr. Joseph Baily, detained at home by sickness in his family.

Mr. LAWRENCE also asked and obtained leave of absence for Mr. Hazzard, called home by sickness in his family.

Mr. BEEBE asked and obtained leave of absence for a few days from to-day for Mr. Minor.

Mr. BEEBE. I also, by request, ask for leave of absence for Mr. Bowman for a few days from to-day.

Leave was granted.

THE JUDICIAL SYSTEM.

The PRESIDENT *pro tem*. The Convention resumes the consideration, on second reading, of the article on the judiciary reported from the committee of the whole. When the House adjourned on Wednesday last it had under consideration the twenty-first section, and the pending question was on the amendment of the delegate from the city of Philadelphia, (Mr. Hanna,) which will be read.

The CLERK. The amendment was to strike out all after the word "court," in the fourth line, to and including the word "determine," in the twelfth line, in the following words:

"In every city and county wherein the population shall exceed one hundred and fifty 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 such 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 and county in orphans' court proceedings shall cease and determine.

Mr. HANNA. Mr. President: I have moved the amendment for two reasons.

One respects the propriety of this provision being an article in the Constitution at all. By that I mean that the whole subject is within the power of the Legislature; that any separate court of any jurisdiction, or of any character whatever, may be established under the first section of this article upon the request of the people or of the bar of any separate district or city. That is the first objection. I am opposed to placing anything in the Constitution not absolutely necessary or anything except that which can be strictly called fundamental and organic. Anything that is included within the powers given to the Legislature is unnecessary to be placed in the Constitution of the State.

I propose by this amendment to strike out all after the word "court," in the fourth line, to the word "determine," in the twelfth line, thereby leaving it entirely with the Legislature to comply with a demand which may come up from the people upon this subject. That objection applies to nearly the whole of this section.

Another objection I have is that I believe in one city of the Commonwealth of over one hundred and fifty thousand population this is not asked for and is not necessary. In the city of Philadelphia, as I remarked before, the court which we propose to establish by this article can answer all the purposes of a separate orphans' court. If the object of the Committee on the Judiciary is to provide a separate court with power like that of an orphans' court, why not go a little further and make the system complete by abolishing the register of wills? I ask the honorable chairman of this committee if we are to have a separate orphans' court, what is the necessity for a register of wills in the large cities? I submit that all the duties of the register of wills, the granting of letters testamentary, the proving of wills, &c., can be performed by this separate orphans' court. If we are to have what has been spoken of here, a probate court, let us so understand, and then abolish the office of register of wills. We do not want in Philadelphia a separate orphans' court and a register of wills besides. It is entirely unnecessary to have both. If we are to establish what they have in New Jersey, New York and the surrounding States, a surrogate, then let us have it so, but not a hybrid system of this kind—a register of wills to attend to one duty, and then a separate orphans'

court to attend to another branch of the same business and the same practice. I therefore object to this provision on these grounds, but mainly because the whole subject can be provided for by the Legislature.

Mr. President, since our vacation, I have had an opportunity of conversing with a great many upon the work of this Convention, and hardly a single individual that I have met but has said to me, "you are endeavoring to do too much; you are placing so much in the Constitution that it will actually be a burden, carrying it down before the people." I therefore hope that we shall try and confine ourselves within the strict limits of a Constitution, and not in the organic law of the State confer upon the Legislature an authority which they already have, or impose upon them as an imperative duty that which they already have a right to do whenever they see fit and proper. I hope delegates will see that the views that I have stated bear with propriety upon this question, and that they will leave the establishment of all these separate courts in the State to the power of the Legislature at the request and demand of the people of the several districts.

Mr. SIMPSON. If there is any one subject that has come or will come before this body to which I have given considerable thought it is the subject now before us. During a practice at the bar of twenty years, Mr. President, I have learned that if there is one crying evil in this city, it is the system of auditing accounts in the orphans' court in Philadelphia. I speak advisedly when I say, and I repeat, that if there is one crying evil in this community it is the system of auditing accounts in the orphans' court of the city and county of Philadelphia. I know there are very many gentlemen who are appointed auditors by the court who are conscientious men, who perform their duties laboriously and faithfully to the court as well as to the estates of decedents, but I am sorry to say that there are very many also who seem to think that the estate of a decedent, the property of the widow and the orphans, is a prey upon which the vultures may feed.

Now, sir, supposing that there would be a discussion on this very subject, I took the trouble to go to the orphans' court office a few weeks ago and make out a list of the accounts that were referred to auditors during the year embracing 1872,

which I hold in my hand. I find by that table that there were two hundred and fifteen persons appointed auditors by the orphans' court during that year; that one hundred and ten of those gentlemen received one account each; forty-two of them received two accounts each; twenty-seven received three each; thirteen received four each; eleven received five each; three received six each; four received seven each; two received nine each; one received eleven; one received thirteen; and one received eighteen, making two hundred and fifteen auditors and four hundred and ninety accounts audited.

That was only the number of auditors and the number of accounts audited. There were seven hundred and three accounts filed. Of that number one hundred and twenty-seven were confirmed by agreement of parties, and I want to say a word about that in a moment. There were eighty-six that were neither confirmed, referred, nor disposed of in this way; but they remain there just so much dead wood in the office of the clerk, without any adjustment, without any settlement, hereafter perhaps to come before the court and litigation ensue upon them.

I find no fault with the court in referring these accounts to auditors. In the main the auditors selected by them have been gentlemen who have performed their duties faithfully and well and have been reasonable in their charges; but, unfortunately, as I said before, there are some who seem to think that the estates of dead men, the estates of widows and orphans, are the prey on which they may live and feed; and it is to break up that part of the system that I shall advocate and vote for the retention of the words that my friend proposes to strike out.

In examining this matter of agreements, the court, fearful lest there might be some wrong done, have hedged around and about parties connected with estates almost insuperable difficulties against getting an account confirmed by agreement. In the first place, they require that the accountant shall not only make affidavit that his account is just, but that some disinterested person must be brought in to testify that there are no debts due by the decedent, that the persons who sign the agreement to confirm are the only parties interested in the settlement of the estate, that they are all *sui juris*, and that there is nothing in the way. Who can tell that every debt due by a dead man has been

paid? Who is willing to assume the responsibility of swearing that? He may swear to the best of his knowledge and belief, but that is not sufficient. He must say upon oath before the courts that there "are no debts;" and unless that is said the account cannot be confirmed by agreement. But go a step further, and after all that is done, in the case of an administration account, the securities of the administrator must be brought in and they must ask the court to confirm likewise. There is no such system as this elsewhere in Pennsylvania. You gentlemen of the bar who practice out of the city of Philadelphia will bear me out that no such system as this exists elsewhere in this Commonwealth. Therefore it is necessary, to protect the estates of dead men, that there shall be a court to pass upon these accounts, a court to determine all these questions.

Now, what will be the effect of this? In the first place, I say that if the Legislature, following out this commandment of the Constitution, shall establish a court with five judges, and make appropriations for the requisite clerk hire, it will be fully occupied, its time will be well taken up in the settlement of these estates, and out of the fees of the office the entire expenses can be paid, all the salaries, and everything necessary to carry on the machinery, and the city of Philadelphia may be made the recipient of from \$25,000 to \$100,000 a year clear profit.

Nor does it stop there. Not only can it be made a source of revenue to the city of Philadelphia, but estates of dead men will be saved a quarter of a million a year to be distributed amongst the widows and orphans; and is that nothing?

I had the honor, Mr. President, of filling the office of register of wills of this county for four months, under the appointment of the Governor, and while holding that office I had an opportunity of seeing the whole of the inside track of all the transactions, of the charges for fees, of the amount of business, and I say to you and the gentlemen on this floor that no man who has not occupied a position in that office has an idea of the business that is transacted there in the course of a single year. If this be left to the courts it will not only be a saving of expense to the estates and to the city of Philadelphia, but a saving of time, and of that I speak advisedly. Under our present arrangement, according to our present laws and fee bills, the account is referred to

an auditor, and if he holds one meeting he is entitled to a fee of \$10, and for making up his report he is allowed \$25, which makes \$35 for a single meeting. If he carries the account into a second meeting he is allowed \$10 more, and so on for every meeting he holds he is allowed \$10. Hence you see what a great temptation it is to a man to do business in this way and to carry on the settlement of an estate from week to week and from month to month, and to multiply meetings for the mere sake of making \$10 every time they meet. I know that more than five meetings cannot be held, says the law, without the consent of the court. But it is very easy to get the consent of the court by an auditor whom it has appointed. He has only to state that there is a question of law raised, a question of intricacy or a matter requiring an examination of the books, or a large number of witnesses, and the court will allow additional meetings to be held, and open the door for an indefinite number of meetings at an expense of \$10 per day to the estate or taken from the amount due to creditors if the estate should be insolvent.

It was only on Saturday last that an auditor's fee was cut down by a judge of the orphans' court in this city from \$250 to \$50. An estate of \$950 was referred to an auditor and he brought in a bill for \$250, and the court after consideration reduced it to \$50 and saved \$200 to the estate of the dead man.

I say here, on my responsibility as a man, as a lawyer, and remembering that for every word I say here I am accountable in the great hereafter, that if you will pass this section as it is you will protect the estates of dead men; you will secure a speedy settlement of their estates; you will put money into the treasury of the city of Philadelphia by a proper system of fees and you will save to the estates and the widows and the orphans nearly a quarter of a million of dollars a year.

Mr. CAMPBELL. If the Convention wishes to accomplish a real reform and give something to the people of Philadelphia that they want, it will pass this section. I agree with every word that has been said by the gentleman who has just taken his seat (Mr. Simpson;) and although I do not think the section as reported is in the most perfect form, or is the best adapted to the wants of the people that could be devised, yet as it stands it is a vast improvement on the system

now in force, especially in Philadelphia. I myself would prefer to have an orphans' court, separate from every other court, with jurisdiction over all matters now cognizable by either the present orphans' court or the register of wills, and to have at least one of the judges of the court constantly sitting as a register of wills or probate judge, and granting letters testamentary or of administration as expeditiously as required. But as we cannot get that, the section as reported by the Committee on the Judiciary will be the next best thing, and therefore I hope that the amendment of the gentleman from Philadelphia (Mr. Hanna) will not prevail. There should be a constitutional provision making it obligatory upon the Legislature to establish for the city of Philadelphia, and for every other large city where the amount of business transacted may require it, a separate orphans' court, so that the estates of deceased persons may be managed properly and settled at a reasonable cost to the parties. I hope, therefore, that the Convention will vote down the amendment proposed by the gentleman from Philadelphia (Mr. Hanna) and retain the section exactly as it stands.

Mr. ARMSTRONG. I am told that it has become a sort of axiom among those who are best acquainted with the facts, that a man cannot afford to die in Philadelphia. [Laughter.] It seems to be settled that his estate becomes the prey of men who live and fatten upon dead men's estates. It is hardly worth while to recur again to the line of argument which has been followed upon both sides of this question in committee of the whole. The city of Philadelphia, according to the expression of a majority of the members of its bar, is satisfied with this section as it stands. It has been very fully discussed, and very ably discussed on both sides, and I trust now that it is not necessary to go over the arguments again. I hope, therefore, without consuming further time upon the subject, a vote will be taken and the section passed.

Mr. MACCONNELL. Mr. President: I merely rose to say, in view of the statement made by the gentleman from Philadelphia, (Mr. Hanna,) by which I suppose he meant Allegheny county, that he is mistaken in saying that we do not want it. We do want it.

Mr. HAY. Mr. President: I rise simply to state my concurrence in the views expressed by my colleague, (Mr. MacCon-

nell,) and to state the further fact that the complaint made in our county is that we ought to have two of these judges instead of only one. We think one will hardly be sufficient to do our business.

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Hanna.)

The amendment was rejected.

Mr. HANNA. I now move to amend, by striking out after the word "county," in the fifth line, down to and including the word "thousand," in the sixth line, and also the words in the sixth line, "shall, and in any other city or county," so that it will read:

"In every city and county the Legislature may establish a separate orphans' court."

I offer this amendment in good faith. I do it because I am opposed to placing in the Constitution an imperative duty upon the Legislature in this respect.

My colleagues from this city have begged this question entirely. They did not choose to reply to a single argument I made against the section; but they propose to cure certain evils of which they complain by forcing upon the people and also obliging the Legislature to establish this separate orphans' court in the city of Philadelphia. I agree with them that there are evils in the present system; but they have, whenever discovered, been corrected from time to time.

The best answer in the world that could be given to the argument of my colleague (Mr. Simpson) was given by himself, when he stated that excessive charges were made by auditors in the settlement of estates. He told us that the court only on Saturday rebuked a certain auditor and corrected the evil. What more could we want than that? That will occur whenever it is brought to the attention of the court.

Again, the Legislature has exercised its power in this direction by passing an act of Assembly which says that the fees of auditors shall be ten dollars for each meeting, not exceeding five, and twenty-five dollars for their report. That is the fee bill now, and it is seldom exceeded. I have never yet known it to be exceeded upon application to the court.

My friend says it is very easy to apply to the court for an extension of time. I have never known it to be done, and I insist that it is the proper way to leave it to the Legislature. Let them establish these courts whenever they are asked for,

and if they are needed in Luzerne the people of Luzerne can ask for them. If they are needed in Philadelphia we can ask for them. If a separate court is needed in Allegheny or Berks or Lancaster, or in any portion of the State, it can be asked for at the hands of the Legislature; and it is but seldom that any such request is denied. In Philadelphia we have never been denied. When we asked the Legislature to give us additional judges in the common pleas it was granted. When we asked the Legislature to give us two additional judges in the district court it was granted.

The proper way is to leave it to the people. When their wants and necessities demand a separate court let them apply to the proper body, namely, the Legislature. For this reason I am opposed to making this an imperative duty upon the Legislature to establish a separate court.

Mr. TEMPLE. I would like to ask the gentleman a question before he takes his seat.

The *PRESIDENT pro tem.* The delegate has concluded. The question is on the amendment.

The amendment was rejected.

Mr. TEMPLE. I move to insert after the words "register of wills," in the twelfth line, the words "recorder of deeds," so as to read:

"The register of wills and recorder of deeds shall be compensated by salary to be fixed by law."

Mr. LILLY. That is not in order. That is already.

Mr. CUYLER. The amendment will not be very appropriate here, but the proposition is a very proper one in the proper place. I hope to see a general constitutional provision that there shall be no officer in the Commonwealth compensated by fees.

The *CLERK.* The section has already been amended to read as follows:

"The register of wills shall be compensated by a fixed salary, to be ascertained and paid as may be provided by law."

Mr. TEMPLE. What I propose is to insert the words "recorder of deeds" after "register of wills." I see it is mentioned in the first part of the section.

Mr. NEWLIN. Put it in another place.

Mr. TEMPLE. If it is provided for elsewhere I will not press it here. I am informed it is provided for; I therefore withdraw the amendment.

Mr. CUYLER. Mr. President: The reading of the portion of the section by the Clerk just now suggests to my mind an amendment which seems to me important. As he reads the section, it is "shall be ascertained and fixed." I think those words are dangerous. I think under cover of "shall be ascertained," the Legislature, operated upon by the influences that sometimes are brought to bear there, may have it ascertained by a given amount of fees or something of that sort. The words are unnecessary. I move to strike out the words "be ascertained," so as to read "shall be fixed by law."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from the city of Philadelphia (Mr. Cuyler.)

The CLERK. The clause reads:

"The register of wills shall be compensated by a fixed salary, to be ascertained and paid as may be provided by law."

Mr. CUYLER. My motion, then, is to strike out the words "to be ascertained and."

Mr. KAINE. I rose for the purpose of moving to strike out this much of this section. It reads:

"The register of wills shall be compensated by a salary to be fixed by law."

I rose to move to amend the section by striking out all after the word "wills," in the twelfth line, to the word "and," in the thirteenth line, striking out: "shall be compensated by a salary to be fixed by law and," because we have already provided in a section in the article on county officers: "All county officers who receive compensation for their services shall be paid by a salary to be prescribed by law."

We have it already. I do not intend to make a motion, however. I have no interest in it.

Mr. CUYLER. My motion is to strike out "to be ascertained and." Then it will read "fixed by law."

Mr. D. W. PATTERSON. I ask the gentleman from Fayette to defer his motion until the question is taken on the amendment of the gentleman from Philadelphia.

The PRESIDENT *pro tem*. The question now before the Convention is on the amendment of the delegate from the city (Mr. Cuyler) to strike out the words "ascertained and."

The amendment was agreed to.

Mr. D. W. PATTERSON. As the gentleman from Fayette does not make his mo-

tion, I move to strike out all after the word "determine," in the twelfth line, down to and including the word "court," in the sixteenth line.

The PRESIDENT *pro tem*. The Chair is informed by the Clerk that that very amendment was voted down the other day.

Mr. D. W. PATTERSON. I think the Clerk is mistaken about that. That amendment was to strike out from the word "law," in the thirteenth line, not including the line above. I propose to strike out from the word "determine," in the twelfth line.

The PRESIDENT *pro tem*. The amendment of the delegate from Lancaster is before the Convention.

Mr. D. W. PATTERSON. I desire briefly to state that I make this motion for two reasons. In the first place, we have provided in the third section of the article on county and township officers that all county officers shall be compensated by salaries. There is no use, therefore, in repeating it in this article. The section in that former article reads thus:

"County officers shall be paid by salaries, to be prescribed by law, and all fees attached to any county office shall be received by the proper officer for and on account of the State or county as may be directed by law; and the annual salary of any such officer and his clerks shall not exceed the aggregate yearly amount of fees collected by him."

Of course, that applies to the register as well as any other county officer.

I have another reason for making this motion. This clause provides that the register of wills shall be *ex-officio* clerk of such separate court, and subject to the direction of said court in all matters. That may not always be practical; it may not always be economical. I know that the register in our county and in five or six other large counties is engaged all the time in the legitimate business relating to that particular office, and he is not able himself to execute it. In three or four counties I know he has one clerk, and in our county he has himself and two clerks constantly engaged in the legitimate business relating to the register's office. Hence it will not be practical, or if practical not economical, at all times to have the register act as clerk of this special court wherever one is provided for, and if provided for by an act of the Legislature, they will provide either for the election of clerks or the appointment of them by the

particular court or judges of the court, so that we should not make it imperative to make the register the clerk of such court.

Now, we have left it that the Legislature may establish such a court, and hence it implies that a county will not have this additional judge and court imposed upon it unless the people petition for it, unless the business absolutely requires it. In our county we have two law judges, and they are competent to do all the common pleas business, all the orphans' court business and the business formerly imposed upon the register's court. All that is now imposed upon them; and if they get along well and keep up with the business, the citizens of such county would hardly ask for an additional judge and a separate orphans' court. Hence I think we ought to leave that which I have moved to strike out entirely to the Legislature; first, because we have fixed the salary of the register—where he does exist—distinct from all connection with all other courts; and, secondly, because it will be inconvenient at many times to make him the clerk of this independent court, where it is established.

In the third place, a man may be elected register and be competent to select a good clerk who has had experience and may fill that place well, and yet may be very far from being competent to be the clerk of the orphans' court, and especially if you impose upon him the duty contained in the last few lines, namely, to audit all accounts and make all distributions. I know we have had registers who have performed their duties faithfully and satisfactorily, who would have been utterly incompetent to write out an auditor's report or make a legal distribution of an estate. If such be the case, we should leave the thing open so as to have provision by the Legislature through either for the appointment by the court or by election, so that we can elect clerks who are competent to perform the duties imposed. For that reason I hope we shall not make it imperative that the register shall be the clerk of this special court whenever established. It seems to me that would be a very injudicious policy, indeed, and unnecessarily expensive. Striking that out still leaves the court when it is demanded, and it even makes it imperative when a city of 150,000 wants it, and it still leaves it to be provided for when petitioned for, and the Legislature may establish it in

any county when demanded, and when the business requires it. I think we should not make it imperative that the register shall be clerk of that court when he may be elected with reference to other duties and be entirely incompetent to perform the duties of clerk and auditor of this proposed court. I am opposed to the court proposed altogether.

Again, part of this clause embraces a provision regulating the mode in which the register shall be paid, when that is already fixed in another portion of the Constitution. I hope, therefore, that the chairman of the committee and gentlemen of the Convention may see that this is legislation entirely and it is not necessarily required to be sustained in order to establish what they wish by this independent court, and when the court is required and needed.

Mr. ARMSTRONG. I should be very glad to concur with my friend from Lancaster if I could see the point as he does. I think it very important that the register of wills should be compensated by a fixed salary, and it is not entirely clear that the provision in the article on counties would cover it, for it may be open to some question whether the register of wills is strictly and technically a county officer. There can be no harm in avoiding all question of that sort, even if it were a duplicate expression of the same thing in the Constitution. In respect to that part which provides that the register of wills shall be *ex officio* clerk of the orphans' court—

Mr. D. W. PATTERSON. Allow me to ask the gentleman a question. Since we have taken away the exercise of any judicial power by the register, as we have, is the register anything more than a county officer; a ministerial officer of the county?

Mr. ARMSTRONG. It may be so; but I suggest to the gentleman that the very necessity of asking the question implies the probability of a doubt and, therefore, it is better to remove that doubt by fixing the matter in the Constitution.

In reference to that part of the section on which I was about to comment, that the register of wills shall be *ex officio* clerk of the orphans' court, it is for this reason: We provide that the orphans' court shall audit the accounts which are filed in the register's office and in the orphans' court. Of course it would be impracticable for the judge himself to audit these accounts if he alone were

competent to discharge that clerical duty; but when we make the register of wills *ex officio* clerk of the orphans' court we give an official relation between the court and the clerk which enables the court to control the action of that clerk, and thus in every legal sense to audit the accounts themselves; or, to express it otherwise, that the courts shall audit the various accounts which are filed as provided for in this section. I think it is better that the section should stand as it is.

MR. DARLINGTON. Mr. President: I think there is some misapprehension in the mind of the gentleman from Lycoming about the register of wills being a county officer. We have expressly said so in article No. 14: "County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of courts." All these are county officers. In another section we have provided that "all county officers shall be paid by salary to be prescribed by law, and all fees attached to their offices paid into the city or county treasury, as the case may be."

I cannot, therefore, see the propriety of confusing this section by saying anything about the register being paid by salary. We have already said it. As to the propriety of his being clerk of the orphan's court *ex officio*, that is a matter about which gentlemen may well differ. It is said by the gentleman from Lancaster (Mr. D. W. Patterson) that in that county he has enough employment as register. Very well, let Lancaster county have a separate orphan's court. By its population, wealth and business, it may fairly be entitled to one, and a judge of the orphans' court would relieve the common pleas very much in that county, and I apprehend would be found a very great convenience to it. That is, however, for them. The power is in the Legislature.

Now, it strikes me that the proposition made by the gentleman from Fayette, (Mr. Kaine,) to strike out the words which leave this upon the footing of the other county officers to be compensated, would be right. Whether we shall strike out that which makes him *ex officio* clerk of the orphans' court, I am not so clear. I rather incline to the opinion that it is not necessary to maintain any relation between the register and the court. It does not follow that it would be convenient. If in the counties where he is abund-

antly employed otherwise he should be called upon to act as clerk of the orphans' court, we know very well that he must do it entirely by deputy, and I now instance the case of my own county, where, although the register's office is the very best in the county by reason of the pay and the smallness of labor, the clerk of the orphans' court, in connection with the clerk of the sessions, as they are there held, gives full employment to a competent man the year around, and the work cannot be done by one man. To make the register, therefore, the *ex officio* clerk of the orphans' court would be only to give the register the appointment of the clerk of that court.

MR. ARMSTRONG. I will make a single suggestion to the Convention. It may be that gentlemen are correct in saying that another part of the Constitution makes the register of wills a county officer by express terms; but it is to be borne in mind that the Convention has not yet had the Constitution in any printed and connected form which enables the Convention as a body to examine this question with care. If the provision be really duplicated in the Constitution, it will fall within the proper duties of the Committee on Revision, and when it comes before the Convention upon their report we can strike out any duplication that may appear. I think for the present it is better to retain the section as it stands.

The amendment was rejected.

THE PRESIDENT *pro tem*. The question recurs on the twenty-first section.

MR. LANDIS. I move to strike out the words "*ex officio*" in the thirteenth line. I object to the words "*ex officio*" for two reasons: First, I do not think they are necessary at all—

MR. ARMSTRONG. I do not think the words are of any great value.

MR. LANDIS. I offer the amendment not as a very material matter, but still I think it better to strike out these words.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Blair (Mr. Landis.)

The amendment was agreed to.

MR. CORBETT. I wish to call the attention of the chairman of the Committee on the Judiciary to the word "expense," in the eighteenth line, in the phrase "without expense to the parties." I wish to know whether this language, "without expense," will cover all costs, or only the auditing. It strikes me that the expression is so broad that it would

not allow the court to impose upon the parties any necessary costs for the attendance of witnesses where there is a contest of facts.

Mr. ARMSTRONG. I should think not. The expression is that the account shall be audited by the court. The duty of auditing is different from the duty of laying proper evidence before the auditor. That which pertains to the calling of witnesses would not be part of the technical duty of auditing. That would be the duty of the parties in preparing and ascertaining the evidence, and I think is no part of the necessary duty of an auditor.

Mr. CORBETT. I do not propose any amendment.

Mr. J. M. BAILEY. Mr. President: I suggest to the Convention that as courts of common pleas are now constituted it would be a physical impossibility for the same judge to audit all the accounts that are filed in the register's office; but in such counties where the Legislature shall establish a separate orphans' court I think the provision is very wise and will answer all the objections that are made to the auditing system by the gentlemen from Philadelphia and Pittsburg. I therefore move to amend this section by adding after the word "office," in line seventeen, the words "in such counties where the Legislature shall establish a separate orphans' court."

Mr. LITTLETON. It means that already.

Mr. J. M. BAILEY. I think not. Also after the word "said" and before the word "court," in the eighteenth line, I move to insert the words "by the said court." That means the separate orphans' court.

Mr. MACCONNELL. I suggest to the gentleman to put in the word "separate."

Mr. ARMSTRONG. I suggest to the gentleman from Allegheny that the words "such separate" have been stricken out in the seventeenth line and the words "in the" substituted. The substance of it is to compel the auditing of accounts without expense in all the counties of the State, and to vest in the Legislature the discretionary power to create orphans' courts where they may be necessary; and if it should so happen that the common pleas courts in any county or district are overburdened by the duty of auditing, or supervising the auditing, which would be done practically by their clerks under their direction, it would be a sufficient reason for appealing to the sound discretion of the Legislature for the establish-

ment of a separate orphans' court within such district. As it stands now, I think the power is sufficiently guarded when we require it as a duty imposed upon the orphans' court of every county to audit every account without expense. It seems to me that we afford a means of relief for every court of common pleas which becomes overburdened by the auditing business.

Mr. J. M. BAILEY. I should like to ask the chairman of the Judiciary Committee a question. If it is impracticable for the court itself to do this, what counsel can they designate to perform this duty?

Mr. ARMSTRONG. The clerk of the orphans' court can do that duty. The register of wills is *ex-officio* clerk of the orphans' court.

Mr. J. M. BAILEY. But you have already in this very section given the register of wills duties that in many counties he does not now perform.

Mr. ARMSTRONG. He will have no duties which will be in conflict with the duty of the court to audit the accounts, which is the important question now pending. We impose upon the court the necessity of auditing accounts without expense to the parties, that is without the expense of auditing in any of the counties of the State. If they are overburdened by the imposition of such a duty, their relief will be found in the power which we have conferred upon the Legislature to create separate orphans' courts.

Mr. J. M. BAILEY. I still think the provision which I have suggested, and which will apply to such counties where there are already separate orphans' courts, will meet and answer all difficulties and also obviate all questions about expense. I think the chairman of the Committee on the Judiciary ought to be willing to apply it only to such counties where a separate orphans' court shall be established under this section.

Mr. ARMSTRONG. I am entirely desirous that we should have such a provision in our county, but I do not believe we shall reach 150,000 population very soon.

Mr. J. M. BAILEY. I propose that the Legislature may give you such a provision.

Mr. ARMSTRONG. The Legislature may give it when it is necessary, but that power is limited by the section as it stands.

The PRESIDENT *pro tem*. The question will probably be better understood if the words of the amendment of the gentleman from Huntingdon be read. The Chair will direct its reading if gentlemen will give attention.

The CLERK read the clause as proposed to be amended, as follows:

"All accounts filed in the register's office in such counties where the Legislature shall establish a separate orphans' court."

Mr. LITTLETON. In order to bring up the question, I move to strike out the words, "without expense to the parties."

It does seem to me that it is not right or just to put all this work on the courts and place on the community the burden and expense of auditing the estates of decedents. I do not think there should be any payment to auditors specially, but there certainly ought to be a tax of some sort imposed for the benefit of the State Treasury upon the estates to be settled in these separate orphans' courts, if the community is to bear the whole expense of it. It does not seem to be right or just or proper that the community should be saddled with the expense of auditing the estates of rich persons.

Mr. ARMSTRONG. That is a matter of detail which would fall within the province of the Legislature, and provision for which it is not necessary to place in the fundamental law.

Mr. LITTLETON. I beg the gentleman's pardon; the section as reported takes away all power from the Legislature on this subject. The only place where any expense can be incurred is where a special audit is had at the request of the parties.

Mr. SIMPSON. Does not the gentleman from Philadelphia see that when the Legislature fixes a fee bill for the register of wills, the fees can be so arranged as to cover all the expenses of the court? That is certainly within the province of the Legislature.

Mr. LITTLETON. I still think that the answer of the gentleman does not meet the objection. The account may be settled by agreement and may never reach an auditor. I contend that these words should be modified in such a way as not to take away from the Legislature the right to tax the business of these courts in amount sufficient to meet and defray the expenses of auditing.

Mr. ARMSTRONG. I do not apprehend that there is any doubt about the Legisla-

ture having that right now. They can by general law provide a system of taxation which will pay the general expenses of the court in such cases.

Mr. D. W. PATTERSON. I want the Convention to take notice that the words "such separate," in the seventeenth line, are now stricken out, and the chairman of the Committee on the Judiciary admits that with those two words stricken out the latter part, commencing with the words "and all accounts filed," down to the end of the section, applies to every county, whether a separate orphans' court is established in it or not.

Mr. ARMSTRONG. That is what it contemplates, as I understand it.

Mr. TEMPLE. We all understand that.

Mr. D. W. PATTERSON. Therefore I want to know if we now intend to impose all the duty of auditing the accounts of the estates of decedents upon the common pleas judges of Lancaster county, when they have all their other business to attend to? They now have the common pleas business, the orphans' court business, and all other judicial matters. To do more would be impossible.

Mr. SHARPE. Let them have a separate orphans' court.

Mr. D. W. PATTERSON. This provision is urged only because of this miserable—and I do not originate the term, for it has been so called by the representatives of Philadelphia—this miserable, corrupt Philadelphia, whose lawyers and judges, they say, are robbing dead men's estates. It is to cure a corrupt practice in this city that all the common pleas judges of the State must have this duty imposed upon them of auditing all the accounts of decedents! We do not want any such thing in Lancaster county.

Mr. HANNA. No prominent member from Philadelphia has said anything of the kind.

Mr. D. W. PATTERSON. Sir, they do admit that both the courts and the bar here are robbing dead men's estates to such a degree that they must have this restriction put upon them. When the subject was before the committee of the whole, I consented to let them have something for Philadelphia, as they seemed to demand and require it. I said if they were so corrupt as alleged by their delegates on this floor, Philadelphia should have some fundamental provision to correct this matter. But I do not want that extended to all the State; and now, by the admission of the chairman of the

Committee on the Judiciary himself, and by the reading of this section, the common pleas judges of Lancaster county, and of every other rural county, must act as judges of the orphans' court, must supervise the auditing of all accounts and must make the distribution of estates; and this must be done without expense to the parties, and without expense to any estate that comes into these courts for settlement! We have never had in Lancaster county any very heavy expenses charged for auditing accounts. I never heard of any complaint in Lancaster county such as we have heard from Philadelphia. The judges there supervise all the charges made for auditing accounts, and if a charge is unreasonable or unprofessional, they strike it down and reduce it to a proper sum. If the judges of Philadelphia do not exercise the same discretion in this matter, they should do so, and that would end very many of these complaints.

MR. NEWLIN. I desire to state to the gentleman that only last Saturday a case came before the orphans' court in this city where an auditor had charged a fee of two hundred and fifty dollars for auditing the accounts of an estate that amounted to nine hundred and fifty dollars. The matter was brought to the attention of the court, and the court reduced the fee to fifty dollars.

MR. D. W. PATTERSON. In what county was that?

MR. NEWLIN. This county.

MR. D. W. PATTERSON. That was only doing their duty. If they would do that in all cases, there would be no such complaints as we have heard from the Philadelphia delegates. But if your judges now, when an account on exceptions or distribution comes before them, can refer it to some one who will do it as well and as cheaply as it can be done, and do it satisfactorily to every executor and administrator and satisfactorily to everybody, why root up this practice and make your judges auditors of these accounts? If you make them do that besides doing all the common pleas work and all the orphans' court work, business which makes them to sit in Lancaster county for ten months in the year, it will be utterly impossible for them to attend to it. It is impossible for them to audit these accounts; but if we pass this section as it is they have that duty imposed upon them, and this, sir, when there is no necessity or public demand for it in Lancaster county or any

of the rural counties. This new machinery is all created to catch this rascality in Philadelphia city. Now, I would advise Philadelphia to get up a separate section for themselves, confine it to the city, a provision providing for building up a wall around that city forty feet high to prevent their impurities and corruptions from spreading out over the rural districts, and I will support it. But we do not require or want such laws to control the outside that city. If the courts and the bar cannot meet the wants of that community and administer the laws purely in Philadelphia, I say, for one, let them have a separate section to control that community and govern that city; but sir, because they are admittedly corrupt from top to bottom and bottom to top, so that crying abuses must be remedied in the city, do not impose such duties as are impossible and make provisions implying corruption and mal-administration on all the other judicial districts of the State.

I hope this will not be done, and I think if the rural members understand it they will not impose this duty, which is so onerous and impossible, on their common pleas judges. They have too much already. And now when those judges of the interior do the auditing and distribution of estates through auditors, at the same time supervising judicially those auditors in regard to auditor's fees, so as to prevent abuses, and doing this in a manner perfectly satisfactorily to all concerned, why change the law in respect to so large a portion of the State. Is there any complaint as to the present law outside of the large cities? Sir, so far as I have heard, there has been no complaint—no admission here from a member of the bar or a delegate from the rural districts indicating any dissatisfaction by the people or the bar.

I hope that we shall not pass this section after the explanation made by the honorable chairman of the committee that it imposes this additional and impossible duty of auditing all accounts upon the common pleas judges throughout the State.

MR. LILLY. I had hoped to be able to vote for this section all the way through; but with those words stricken out in the seventeenth line, I cannot see my way clear to do it. I hope to see our judicial districts remain as they are. I shall vote against making every county with a population of thirty thousand a separate ju-

dicial district. The way I vote to-day, I expect to see our district remain as it is. It is perfectly satisfactory to us. Our judge is able to do the business satisfactorily to everybody; and as to auditing accounts in our county, I have never heard the first word of complaint; I have never heard a complaint of an improper charge being made; and with those words stricken out, making it extend to the whole State, I cannot see how I can vote for the section, because I do not believe that our judge, with four counties in his district, can travel from county to county and audit all these accounts. I cannot see that it can be done; but with those words in, excepting districts of the kind that I reside in, I would very willingly vote for it.

Mr. ARMSTRONG. I think the gentlemen who have last discussed this subject omitted to observe that in the eighteenth, nineteenth and twentieth lines it is provided: "Except where all parties in interests in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint." The power is clearly vested.

Mr. D. W. PATTERSON. But that does not leave it in the power of the court; it depends on the consent of the parties.

Mr. ARMSTRONG. That is just the purpose of it, that when the parties are not willing to consent to the appointment of an auditor the duty of supervising and adjusting the accounts, filed in the register's office and the orphans' court shall be imposed upon the court as a part of their ordinary and official duty; and there is no good reason to distinguish between duties which are to be imposed upon the courts in any one line of judicial investigation and in another. It is a pernicious practice, alien to the very fundamental principles on which the judiciary ought to be established, and which ought no longer to exist. If the parties desire an auditor to be appointed, it is fully within the purview of this section to have such auditor appointed where the parties desire it. If they do not so desire then it falls upon the court as a part of its judicial duty. If those duties become burdensome, and they be unable to discharge them, the remedy is provided by that provision which authorizes the establishment of orphans' courts, distinctively so called, in every district in the State within the sound discretion of the Legislature.

I think, therefore, the section is well guarded; it meets every case; it is not liable to abuse; and in my view will be a great advance upon the present judicial system of the State.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. DARLINGTON. I move to amend, in the eighteenth line, by inserting at the commencement of it the words "if necessary." It will then read:

"All accounts," &c., "shall, if necessary, be audited by the court without expense to the parties."

Wherever an account is filed that is satisfactory to all parties, there is no occasion for troubling the court with it further or for auditing it; and the interests of all parties are sufficiently awake, the people are sufficiently attentive to their own interests, not to allow anything to pass that they are not satisfied should pass. I believe in a great measure the cause of the difficulty of which we have heard in Philadelphia has been the sending of everything to auditors, whether the parties were satisfied or not. I would never compel the court to audit or appoint auditors unless in their judgment it should be necessary, and that should be made known by exceptions.

Mr. ARMSTRONG. I would suggest that the auditing may be in many instances merely formal, but it is one of those forms which cannot judiciously be dispensed with. When an account is presented in either the register's office or the orphans' court it should pass through the ordinary forms, which will prevent undue haste in the confirmation of the account. When it is thus presented there can be no hardship or any delay, when there is nothing to be done. If so be that there is nothing to contest in an account the auditing, whilst it will be formal, will keep the record in the ordinary and proper form and will be the official evidence that the account has not been passed with undue haste.

I think, therefore, it is wise to retain these words as they are.

Mr. LANDIS. Before the vote is taken I have but one word to add. Up to this moment I had intended to vote for the section, but so long as the latter part of it remains in its present shape, I will not vote for it. It requires that the accounts filed in the register's office and orphans' court shall be audited by the orphans' court. To that I am opposed. In the rural dis-

tricts the practice at present is to audit only the accounts to which exceptions are filed or in which a balance is required to be distributed. The section as it now stands, however, requires that all accounts filed shall be audited, and that by the orphans' court. Now, sir, the judges of the separate orphans' court may find abundant time to do so, but the judges of the common pleas cannot.

Mr. CUYLER. Insert the words "which may be required by law to be audited."

Mr. LANDIS. I will agree to anything that will not require all accounts to be audited.

Mr. CUYLER. I think that would relieve the difficulty of many members.

Mr. LANDIS. I hope if the section remains in the shape it now is that the country bar will vote against it.

Mr. CUYLER. I move to amend by inserting the words, "which are required by law to be audited," to be inserted in that part of the section which provides for the auditing of accounts. As it stands now, all accounts would be required to be audited by a constitutional requirement. Where there are no exceptions, there is no reason for an audit at all, although it is the practice in this county to do it, simply for the purpose of increasing the patronage of the judges and the profits of members of the bar. We had better be rid of it. I therefore move to insert after the word "audit" the words "which are required to be audited."

The PRESIDENT *pro tem*. That is not in order. It is not an amendment to the amendment of the delegate from Chester.

Mr. DARLINGTON. I wish to modify my proposition so as to read, "shall, if excepted to, be audited."

Mr. J. S. BLACK. It certainly is not necessary in order to come within this law that the court or anybody else should go item by item over an account which all the parties to it after full notice admit to be correct. The account is sufficiently audited then.

Mr. LANDIS. That may be; but then the language of the Constitution, which says they shall be audited by the court, becomes a mere form. If the court has nothing to do but merely endorse a certificate, the auditing is merely a form.

Mr. J. S. BLACK. It is to be audited where there are no exceptions; that is all the court has to do or ought to do; but where there are exceptions, then it becomes the duty of the court or somebody

else to investigate the truth of what is alleged in the exceptions.

Mr. LANDIS. Yes, sir; and it is just with a view of meeting that difficulty that I am anxious that some gentleman should suggest an amendment, or the chairman of the committee should accept some modification that would permit the judges of the orphans' court to refer such questions to an auditor to pass upon the exceptions and report them to the court.

Mr. J. S. BLACK. That has been the mischief.

Mr. LANDIS. That has not been the mischief in the rural districts. It has been the mischief in the large cities, particularly in the city of Philadelphia, as admitted by the representatives from that city; but it has not been asserted up to this time that there has been any mischief at least in the large majority of the rural counties. In my own district I know there is no such mischief. I am opposed to it, and in behalf of the judges of the orphans' court of the rural districts I protest against any provision being engrafted upon our Constitution that will require them to perform that kind of duty.

Mr. MACCONNELL. I rise to suggest that the clause should be amended to read as follows: "Where exceptions are taken to any account filed in the register's office, it shall be audited by the orphans' court without expense to the parties."

Mr. ARMSTRONG. I suggest to the gentleman make it read thus: "All accounts filed in the register's office and in the orphans' court to which exceptions are filed."

The PRESIDENT *pro tem*. There is an amendment now pending, the amendment offered by the delegate from Chester (Mr. Darlington.)

Mr. DARLINGTON. Do I understand the chairman of the committee to propose to modify the clause as he has just read?

Mr. ARMSTRONG. The gentleman from Allegheny (Mr. MacConnell) submitted an amendment which strikes me favorably.

The PRESIDENT *pro tem*. The amendment of the delegate from Allegheny is not in order. The pending question is on the amendment of the delegate from Chester, to insert after the word "shall," in the seventeenth line, the words, "if excepted to," so that the clause will read: "All accounts filed in the register's office

and in the orphans' court shall, if excepted to, be audited by the court."

Mr. ARMSTRONG. I do not like the phraseology of that amendment as well as that of the gentleman from Allegheny.

Mr. DARLINGTON. I have no objection to any phraseology that will accomplish the object.

Mr. ARMSTRONG. He proposes to make it read:

"All accounts filed in the register's office and in the orphans' court to which exceptions shall be filed."

Mr. DARLINGTON. Very well; I will so modify it.

The PRESIDENT *pro tem*. The delegate from Chester accepts the modification suggested by the delegate from Allegheny, (Mr. MacConnell,) and the question now is on the amendment as modified.

Mr. D. W. PATTERSON. I merely wish to state that the amendment proposed implies that there is no necessity for an auditor except when exceptions are filed. Now, we know, and it is the experience of every lawyer here, that there is often a dispute about distribution, heirship, transferees, &c., which requires an auditor just as much as in a case of exceptions. You leave that entirely out. What will you do then?

Mr. J. M. BAILEY. I suggest to the chairman of the committee that the modification which he has accepted makes the section decidedly worse than it was before, because it requires all accounts, where exceptions are filed, to be audited at the expense of the parties, while those very accounts to which exceptions are filed are the ones as to which there should be no expense. I hope it will be withdrawn.

Mr. MACCONNELL. I believe I made a mistake when I suggested the amendment.

Mr. ARMSTRONG. I am entirely in agreement with the gentleman from Huntingdon, that we have been altogether too hasty in adopting this suggestion. I think it will be very dangerous, because it will allow the courts to order an auditor upon any account to which objections have not been filed, and that is a part of the enormous abuse of which the citizens of Philadelphia have a right justly to complain. As to the rural districts, I will say it is a term of very indefinite significance. In our part of the State we find the beginning of a system which is already becoming an abuse, and there is no

part of the State in which persons are not apt to learn that it is of decided profit, though it may be a very unholy and unwarranted profit. I think the section is right as it stands.

The PRESIDENT *pro tem*. The question is on the amendment as modified.

Mr. ARMSTRONG. I withdraw it.

The PRESIDENT *pro tem*. The delegate from Lycoming cannot withdraw it. It was offered by the delegate from Chester (Mr. Darlington.)

Mr. ARMSTRONG. Then I hope it will be voted down.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. COCHRAN. I shall vote, I believe, for this section, though with a great deal of hesitation. The practical difficulty which has been suggested here with regard to the auditing of accounts by the orphans' courts, without expense to the parties, in all the counties of the State, is a very great one, and it is practically impossible, I apprehend, for the judges in the interior of the State to attend to that business in the orphans' court. I do not see how it is possible for them to do it personally and directly. Then, in addition to that, with regard to the last clause of the section that has been so much talked about here, it simply refers to the auditing of accounts. Now, the question of distribution, which is not the auditing of an account at all, but the distributing of a balance on an account, is as important as any which arises on exceptions to an account, and that appears to me to be wholly neglected by the section. Not only questions of distribution between the representatives of the deceased party, legatees and others, but questions which arise in distribution where creditors are concerned, because under our decisions now creditors can go before the auditor to distribute and prove their debts before him and have them disposed of, just as they used to do where they resorted to the courts of common pleas for that purpose. I think that the section, while it may possibly be an improvement upon our present system, will still be very lame and very defective. The great defect of our present system with regard to the orphans' court, is, according to my observation and experience, that the business of that court does not receive the time and attention which it deserves from the courts themselves. It is passed upon hastily and hurriedly

in the intervals of other business, or even while other business is going on, and matters are taken too much for granted, and too little consideration is paid to them.

I had the honor to submit a proposition, and like everybody else, I suppose, thought my proposition the best. I thought the better plan would be, in counties of sufficient population and business, to establish a complete change of this system by erecting a probate court, dispensing with the registers of wills entirely, and putting this whole business in the hands of a separate judicial organization from the first issuing of letters of administration or the probate of a will (and that is as much a judicial question as any other, and the register acts as a judge in that particular,) down to the very close of the distribution, all passing under the eye of a single tribunal and all the papers filed in a single office. But, sir, we have gone too far for that; we cannot, I suppose, retrace our steps. When it was presented it was not acceptable to the Convention and it was rejected. That being the case, although I consider this section defective, and that it does not meet the wants which ought to be met, I shall vote for it, thinking it still probably an improvement upon the present system.

Mr. KAINE. There is no amendment now pending, I believe, and the question is upon the section.

The PRESIDENT *pro tem.* It is.

Mr. KAINE. I move then to amend, by striking out all after the word "county," in the third line, to the close of the section. That will leave the section remain as it is in the old Constitution.

"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."

That is the old Constitution, nothing more and nothing less, and it is all that is contained in the old Constitution upon that subject. I cannot vote for the rest of this section, and shall content myself with calling for the yeas and nays upon it. What follows in this section after what I have proposed to retain, viz: "The register's court is hereby abolished," has already been provided for in the first section of this article. The first section of the article in the old Constitution provided for a register's court but we have now left that out; it will have no existence, and I see no use in putting that provision here. At any rate it should not be

in here if it even were necessary, because it should go in the schedule.

In my opinion the whole of the section beyond these words is objectionable, and I shall vote against it. If nobody else desires to make any remarks on the subject, I call for the yeas and nays on the motion to strike out.

Mr. H. W. SMITH. I second the call.

The PRESIDENT *pro tem.* The call for the yeas and nays must be seconded by ten gentlemen.

Mr. H. W. SMITH. The gentleman who has last spoken is certainly right.

Ten delegates not rising to second the call, the yeas and nays were not ordered.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Fayette (Mr. Kaine.)

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section.

Mr. HANNA. I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

Mr. D. N. WHITE. I should like to have the section read, that we may know in what shape it is now.

The PRESIDENT *pro tem.* The Chair will direct the section to be read as amended.

The CLERK read as follows:

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 150,000 the Legislature shall, and in every 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 fixed salary, to be paid as may be provided by law, and shall be 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 the register's office and in the 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.

The PRESIDENT *pro tem*. The yeas and nays have been ordered on this section, and the Clerk will call the roll.

Mr. DARLINGTON. I ask a division of the question. ["Too late."]

The PRESIDENT *pro tem*. The yeas and nays have been called on the section as it stands.

Mr. DARLINGTON. Is it too late to call for a division of the section? ["It is."]

The PRESIDENT *pro tem*. The yeas and nays have been ordered on the section as it is.

Mr. DARLINGTON. Does the Chair rule an amendment out of order?

The PRESIDENT *pro tem*. I think so.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baker, Barclay, Beebe, Biddle, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Campbell, Carey, Cochran, Corbett, Corson, Curry, Cuyler, Dallas, Darlington, Davis, De France, Edwards, Elliott, Fell, Finney, Fulton, Funck, Guthrie, Hay, Hemphill, Horton, Howard, Lamberton, Lear, Littleton, Long, MacConnell, McCulloch, Mann, Mantor, Metzger, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, Samuel A., Read, John R., Runk, Sharpe, Simpson, Smith, Wm. H., Temple, Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., Worrell and Wright—69.

NAYS.

Messrs. Addicks, Bailey, (Huntingdon,) Clark, Gibson, Gilpin, Green, Hanna, Harvey, Hunsicker, Kaine, Landis, Lawrence, Lilly, McClean, Patterson, D. W., Reynolds, Ross, Smith, H. G., Smith, Henry W. and White, Harry—20.

So the section was agreed to.

ABSENT—Messrs. Ainey, Andrews, Bailey, (Perry,) Bannan, Bardsley, Bartholomew, Bigler, Bowman, Brown, Calvin, Carter, Cassidy, Church, Collins, Craig, Cronmiller, Curtin, Dodd, Dunning, Ellis, Ewing, Hall, Hazzard, Heverin,

Knight, MacVeagh, M'Camant, M'Murray, Minor, Mitchell, Mott, Niles, Porter, Purviance, John N., Reed, Andrew, Rooke, Russell, Stanton, Stewart, Struthers, Van Reed, White, J. W. F., Woodward and Meredith, *President*—44.

Mr. PATTON. I move to amend, by inserting a new section at this point, and I ask the indulgence of the Convention for a few minutes while I present some reasons for its adoption. I ask the Clerk to read the new section.

The CLERK read as follows:

SECTION —. All legal notices or advertisements emanating from the courts and public offices in the respective counties of this Commonwealth, now or hereafter required to be published for public or private information, shall be printed in not less than two newspapers (if so many be issued) in the county where such courts or public offices are situated, one of which said newspapers shall be of the minority political party in said county having the largest circulation, the rates for such publication or advertising to be fixed by law.

Mr. PATTON. Mr. President: I trust this section, which is so much demanded and so eminently just and proper, involving as it does the interest and right of every tax-payer in the Commonwealth, will receive the sanction of this Convention.

Under the present unjust system of legal advertising, nearly one-half of the people of a majority of the counties are disfranchised; that is, they are not permitted under the present system to know through their own party organs what is transpiring of a legal character. As citizens and tax-payers, vested with equal rights, *but not enjoying this boon*, they are compelled to take an opposition paper or resort to loaning from a neighbor or to remain in ignorance on important legal matters involving their interests.

By passing this section the evil will be remedied, the system will be secured, and equal and exact justice will transpire. It may be urged that this belongs more properly to the Legislature. We grant it; but it is a *fact*, as gentlemen on this floor can testify, and as all know who have any knowledge on the subject, that the Legislature *has* declined and still *does* steadily decline to meet the want for reasons which this Convention can readily understand; and now the people expect this body, assembled for the purpose of correcting existing evils and supplying

the omissions of our present system, to act in their behalf, composed as it is of men free from partisan influences. As remarked, it is a well settled fact that the Legislature will give no relief. Some counties have *special laws* upon the subject, but these can only be secured when the representation is just right, and only occurs in isolated cases. If one county needs legislation on this subject, why, sir, not all the counties? We find other States regulating this advertising by law; we also find United States judges ordering the same regulations here asked for, which establishes the necessity and justice of enacting this section.

The evils flowing from our present loose and unsatisfactory system of legal advertising, involving the expenditure on the part of the people of a *million of dollars*, are manifold. I have not the data to present them all; but I can refer without fear of contradiction to some of them. Among the glaring evils are the partial publicity secured; the wide difference in charges for the same or similar notices, *varying, in some instances, one hundred per cent.* in different counties; corruption between county officials and printers in the struggle to secure this advertising, thus subsidizing the press, making it a mere machine in the hands of ambitious and, in many cases, bad men. I speak whereof I know when I assert that these evils exist, and that they are alarmingly on the increase.

Mr. President, it hardly becomes necessary for me to stand up before this intelligent body of delegates, representing the entire State, who are presumed to know something of this matter, and occupy time in proving what is manifestly true, and what is admitted by every intelligent man.

The last clause in the section I regard as important, as it will secure uniformity in prices. The cost of advertising a tract of land by the sheriff (assuming equal length of description) will be the same in Bradford county as in Blair county, and so with all other advertising; whereas, at present, with no governing principle, the prices being only regulated by a bargain between the official and printer, results in a wide difference of charges.

Mr. President: I desire to present a few facts as they exist in my own county, as more or less illustrative of every county in the State. The election proclamation, in which every voter is directly interested, has for years been published in only

one paper in the county. The same may be said of the proclamation concerning our courts.

The annual statement of receipts and expenditures, in which every tax-payer is deeply interested, exhibiting, as it did last year, the expenditure of over *sixty-one thousand dollars* of the people's money, has *only* been printed for years back in one paper, and the commissioners of Bradford county steadily refuse to make any further publication. Surely this state of things should not be permitted longer.

The sheriff's sales, prothonotary's notices, register's and recorder's advertising, &c., are printed in one principal sheet at the county seat, and a second paper of the *same party*, with only an indifferent local circulation of two hundred or three hundred is selected for this work. Thus proper publicity is avoided, and the people remain in ignorance as to the legal proceedings.

These evils have existed for years in Bradford county, and no change can be secured. The Legislature has been applied to but declines to give relief.

Mr. President, Bradford county has a population of some *sixty thousand*. She has thirteen thousand voters and fifty election districts. Admitting that the paper in which the legal matter appears has three thousand circulation, which is a high figure, we find by this unjust practice of our county officials that some ten thousand of our tax-payers are denied the privilege, I may say the right, of reading through the public press the legal transactions of the county. Is not this a manifest wrong, a monstrous, glaring evil?

What is true of Bradford is more or less true of most of the counties of the State. Surely, no effort on my part is needed here to prove the fact; it follows as a natural sequence.

In the State of New York, (I speak of New York, as I am more familiar with her system,) and also in most of the eastern and western States, the law requires the election proclamation to be printed in *every newspaper in the State*, and all other legal advertising is regulated by law. In Bradford county, Pennsylvania, with *seven newspapers* printed in it, the election proclamation, annual statement, &c., *only* appear in one newspaper!

By the last report of the Auditor General of the State we find that for advertising the amendment to the Constitution providing for the election of State Treas-

surer, the following wide difference in charges occurs: The lowest charge for daily advertising, in daily papers, is \$35; the highest is \$500; showing clearly that one publisher charges over *fourteen* times more than another for the same work. For advertising this amendment in the weekly papers we find in the same report the lowest charge to be \$7 25, and the highest \$92 50; showing that one printer charges twelve and a half times more than another.

Surely, sir, these are astonishing figures; but they are nevertheless true, and in the interest of the State call loudly for reform. We might very properly account for a difference of, perhaps, *four* or *five* times more between printers, owing to circulation, &c., but to suppose that one printer should charge over *fourteen* times more than another, for precisely the same work, cannot be justified by any rule of right or justice. These facts prove the propriety, and even necessity, of some *law regulating* the prices of advertising legal matter.

In dailies the advertising (as I am informed by the oldest and best printers) of the amendment referred to should not have cost the Commonwealth over an average of \$100, and in weeklies an average of \$20 would have been sufficiently remunerative.

I only refer to these facts that the Convention may see the evil complained of.

Mr. President, the main object in good government should be to equalize the rights, benefits and burthens of the people as much as possible. The present practice of partial official advertising is in unqualified contravention of that object. The dominant party in each county elects its own partisans to the county offices, and they give the public advertising exclusively to their own political organ, which, with but few exceptions, as we all know, is never subscribed for or read by the partisans of the opposite party, and hence the county sheriff may advertise in the dominant party organ a man's house or mansion farm to be sold at the county court house, while the owner may reside in a remote part of the county, and, being of opposite politics, he may not have seen or heard of the advertisement, and the first notice he may have of the sale and sacrifice of his property may be by the sheriff turning him and his family out in the street, and delivering his home—the hard earnings and privations of years—to some stony-

hearted, covetous purchaser and political opponent, thus giving him no opportunity to invoke the humane aid of his friends and neighbors to come to his rescue and save his property from a ruinous sacrifice, and he and his wife and children from being left homeless and without a shelter to cover their heads.

Again, the executors or administrators of a decedent's estate may advertise in the same organ for the creditors of the decedent to present their accounts for payment within a given time or be debarred from their payment, and a man may have a just claim against the estate, but being of opposite politics, he may not have seen the notice, and by not complying with its requirements he may thus virtually be defrauded out of a just debt.

In the case of the sale of property, by order of the orphans' court, for want of a more general notice the property of orphan children may be sold far below its value and their interests thus be greatly sacrificed. I could adduce other cases of injustice under this partial practice, but I think I have shown enough to justify the proposed change.

Under the present practice the paper of the dominant party, besides having the largest number of subscribers and greater pecuniary support, has also a monopoly of the public advertising; whereas, if this provision shall be adopted the organs of both political parties will have an equal share of the profits of official advertisements, without taking a dollar from the advertising patronage of the organ of the dominant party, and, moreover, it will promote the ends of justice and humanity.

This measure, Mr. President, addresses itself, not only to our imperative sense of justice, but to our just and humane sympathies for unfortunate debtors and unprotected orphans.

Pass this section, Mr. President, and the evils complained of will be obviated; uniformity will be secured; fair and just rates fixed; reasonable publicity secured; and I am justified in saying that a large saving to the people would be secured by avoiding exorbitant charges now so frequently extorted.

But, Mr. President, I have said enough. I yield the floor under the most sanguine conviction that the remedy asked for will be granted, by the adoption of this section or something like it.

Mr. H. W. SMITH. After the word "circulation," in the next to the last line

of the amendment of the gentleman from Bradford, I move to insert the words, "and also in one newspaper independent of all political parties, if such there be in the county."

Mr. BAER. Mr. President: I rise for the purpose of seconding the amendment of the gentleman from Bradford, (Mr. Patton,) because, as he said of himself, I too have had some experience in that direction. For a long time in our county we labored under the inconvenience of having all the proceedings published in only one paper. As at present organized we have publication in two, and we got that by procuring special legislation. It seems that the Legislature were more favorable to us than they were to Bradford. But I look upon it as a proposition entirely right, not violative of any fundamental principle, but wholly in accord with the very principles that underlie our government; and therefore, so far as I am concerned, I do not permit the question as to whether it is legislative in its character to decide for me whether I shall vote for it or not, for the reason that nine-tenths of all we have done since we have been in this Convention might in like manner have been done by the Legislature.

I shall vote for it, not because the Legislature cannot do the same thing, but, as the gentleman has so well said, because heretofore the Legislature has refused, or at least neglected, to provide for the wants of the people in this respect, and I assert that the people of the State of Pennsylvania should have the privilege of reading all these proceedings without being compelled to subscribe for both the political papers of their county, as they are compelled to do if you permit the publication to be confined to one paper only. They must either take both papers or they must not know what is going on.

It is entirely right that the people should be informed, and as the additional expense is but a mere trifle, it must be entirely proper for this Convention to incorporate it in the fundamental law. It is so for this reason: That when you put it here the people will be secure as against any political combinations in the Legislature by which to keep up some local party advantage at home; and when you send to the Legislature men from any county who are in the majority, as they must be, they feel a delicacy, they fear that they will be held to account if they do anything that would encourage the

paper of the opposition, as the publication of these proceedings to a certain extent does.

I think this Convention is here to do justice to all the people of the State without looking at the matter of politics on one side or the other, and although this does involve a question of politics it does not involve it in such a way as to make it improper to be considered by this Convention. I have held myself entirely aloof from all political questions since I have been in this body, and do now; and I go for this proposition, not because I come from a county that is in the minority, for though we be in the minority we are provided for by special legislation, but I go for it on the fair, plain principles of justice; and I hope the Convention will adopt the amendment and incorporate it in the fundamental law.

Mr. H. W. SMITH. Mr. President: I hope that the amendment which I have offered to the amendment will be adopted, although I am not prepared to say that if it is adopted I shall vote for the section when so amended. I think the time has come when we ought not to say in our great fundamental law that two parties exist in this country. If you wish to adopt any provision at all relative to legal advertisements, and provide that those advertisements should all appear in two papers, say that they shall be published in the two papers that have the largest circulation, and not in papers of the largest circulation of each of the two great political parties that are supposed now to exist.

The time is coming, let me say, when there will be an independent party in this country, in my humble judgment as there ought to be, against the two great political parties as they now exist.

What! Require in your Constitution that a legal advertisement should be published in political papers, in papers that advocate political parties, right or wrong; because where two political parties exist one pursues one policy and another pursues a different policy, and one must be wrong, and perhaps there may be times when the other is not right.

I trust that if the section as offered does pass it will be first amended, and that we may recognize independent papers as well as those of both political parties.

Mr. BEEBE. I move to amend the amendment after the word "party"—

The PRESIDENT *pro tem*. It is not further amendable. The amendment of the

gentleman from Berks (Mr. H. W. Smith) is an amendment to the amendment of the gentleman from Bradford (Mr. Patton.)

Mr. BEEBE. I will state for information what I should propose if it were in order, to insert the words, "and also one religious paper." There are people who read religious papers but who do not take any political papers at all.

The *PRESIDENT pro tem.* The question is on the amendment to the amendment.

The amendment to the amendment was rejected, the ayes being ten, less than a majority of a quorum.

The *PRESIDENT pro tem.* The question recurs on the amendment of the delegate from Bradford (Mr. Patton.)

Mr. ARMSTRONG. Upon this question I have only a word to say. It is so pre-eminently within the line of the Legislature, and the experience of the State has been so much against it, that I can hardly conceive it possible that the Convention will adopt this section. Wherever it has been adopted by the Legislature it has led to bickerings, disputes and ill-will. The matter had better be left to the Legislature.

Mr. DARLINGTON. I want to say a single word. I merely want to remind the the Convention that not long ago we got into our Constitution something about parties; we were ashamed of it in a day or so, and by common consent put it out. Now do not let us put it in again.

Mr. KAINE. I call for the yeas and nays on this question.

The *PRESIDENT pro tem.* It requires ten gentlemen to second the call for yeas and nays. Those seconding the call will rise.

More than ten delegates rose.

The *PRESIDENT pro tem.* The Clerk will call the names of delegates on the amendment of the delegate from Bradford (Mr. Patton.)

The question was taken by yeas and nays with the following result:

Y E A S.

Messrs. Achenbach, Baer, Bailey, (Huntingdon,) Baker, Biddle, Black, J. S., Buckalew, Campbell, Cochran, Curry, Dallas, Davis, Elliott, Fulton, Gibson, Gilpin, Guthrie, Hay, Hemphill, Horton, Howard, Kaine, Landis, Lawrence, Long, Palmer, G. W., Patton, Pughe, Purman, Ross, Simpson, Smith, H. G., Smith, William H. and Turrell—34.

N A Y S.

Messrs. Addicks, Alricks, Armstrong, Beebe, Black, Charles A., Boyd, Brodhead, Broomall, Carey, Corbett, Corson, Cuyler, Darlington, De France, Edwards, Ewing, Fell, Finney, Funck, Green, Hanna, Harvey, Hunsieker, Lear, Lilly, Littleton, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Metzger, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, Samuel A., Reynolds, Runk, Sharpe, Smith, Henry W., Stewart, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N., White, Harry, White, J. W. F. and Wright—49.

So the amendment was rejected.

ABSENT. — Messrs. Ainey, Andrews, Bailey, (Perry,) Bannan, Barclay, Bardsley, Bartholomew, Bigler, Bowman, Brown, Bullitt, Calvin, Carter, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curtin, Dodd, Dunning, Ellis, Hall, Hazzard, Heverin, Knight, Lamberton, MacVeagh, M'Camant, M'Murray, Minor, Mitchell, Mott, Newlin, Niles, Patterson, D. W., Porter, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Russell, Stanton, Struthers, Temple, Van Reed, Woodward, Worrell and Meredith, *President*—50.

The *CLERK* read the next section as follows:

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."

Mr. ARMSTRONG. This section is the eleventh section of the fifth article of the present Constitution.

Mr. HARRY WHITE. I offer the following amendment to come in at the close of the section:

"And all criminal prosecutions shall be conducted by the Attorney General or deputies by him appointed and removed at his pleasure."

I will give way for the present to the delegate from York (Mr. J. S. Black.)

Mr. J. S. BLACK. It seems to me that a gentleman who leads this Convention ought to be prepared whenever he presents an amendment like this, to give a very full explanation of his reasons for it; but the gentleman from Indiana, it seems, want me to perform his duty. [Laughter.]

It must certainly be known to everybody here that the manner in which criminal prosecutions are conducted in some parts of the State is a crying evil. The duty of a public accuser is in some respects as important as that of a judge. Whether criminal justice shall be properly administered or not depends as much upon the prosecuting officer as the judge. The prosecuting officer can, if he sees proper, produce a great deal of injury to innocent persons by making false accusation against them. He may not be able to convict them, but he can put them to trouble and shame and vexation of spirit. Then he can do great injury to the public by relieving guilty persons from the punishment which is justly due to them. If you have a prosecuting attorney in any county who is of doubtful integrity you can by conciliating him do nearly what you please.

A criminal offence ought to be regarded as an insult to the peace and dignity of the Commonwealth of Pennsylvania; but in some portions of the State, it is said—I do not know with what truth, but it comes from authority that I do not feel myself justified in disregarding—that it is not an offence against the Commonwealth, but an offence against the district attorney. His functions are exercised like kissing, it “goes by favor.” He is in communication with the grand jury constantly, and he can tamper with it; at all events he can exercise a great deal of influence over it. A bill may be ignored where the proof could easily be produced to show that it ought to be found, and it may be found sometimes when it ought not to be, and a perfectly innocent party placed under the necessity of going through all the trouble and suffering, all the wear and tear of feeling that must necessarily be endured by a man who is in that situation.

One of the most important interests that society has is the just punishment of all persons who commit offences against the State; and where the prosecuting attorney is elected, where he depends upon popular favor, upon the votes of criminals as well as others, it is not likely that his duty will be performed fairly and impartially except where the criminals are very few and where the popular sense is very strong in favor of justice and right, as it is in the rural districts of the State.

If the city of London had been divided into parties as nearly equal as the city of Philadelphia now is, and the Whigs and

Tories had been in the habit of coming to elections every year or every two or three years and voting for all the offices, and among others for the office of prosecuting attorney, the sixty thousand thieves, to say nothing of other criminals, would have held the balance of power in their hands. Jonathan Wild, who was the head thief, could have elected for district attorney whom he pleased. He might have elected himself—certainly he would have chosen some one who would be sure to see him safe through any trouble he might get into. The necks of all his gang would have been safe from the halter.

There ought to be some provision in this Constitution which would put the prosecutions of criminals into the hands of some central authority responsible to the whole people of the State and not merely to a political party in the particular district where the offence is committed. The prosecuting attorney may be the representative of a party; he may be very unwilling to punish his own constituents; he may be a little too willing to give trouble to those who do not vote for him. He may perhaps even represent a ring inside of his own party which he takes under his special protection.

Perhaps it is true that better parties will have political objections to the measure now proposed. The politicians who belong to the majority party in any county are unwilling to let a case like this go into the hands of the central government, which may be opposed to them. It is taking away from them the power to bestow that much patronage upon their own partisans. But the administration of criminal justice is above such considerations. But I am afraid that party feelings will continue to govern us more or less in spite of all we can do, and sometimes against our better judgment. If, therefore, we make this provision apply to the larger towns it may be more acceptable. Let it apply to the city of Philadelphia and the county of Allegheny.

Mr. H. W. PALMER. And Luzerne.

Mr. J. S. BLACK. Or perhaps it ought to include Luzerne and Schuylkill. But we certainly ought to take the prosecution of criminals in this city under the control of the State. It is as much an injury to you and me, who live in Erie and York—

Mr. CAREY. The moral portion of the State. [Laughter.]

Mr. J. S. BLACK. Yes; in the moral portion of the State. I say it is as much an injury to us that a crime should be committed and go unpunished in the city of Philadelphia as it is to anybody who lives here. I hope, therefore, that this thing will be taken into serious consideration. If there are gentlemen who do not like it at first sight let them take a little time to reflect. I hope they will pause and ponder upon it before they reject it finally. If a little debate could be provoked it might do some good. Gentlemen who oppose it will see the futility of their reasons when they produce them in argument. At any rate we shall, in the course of a little time, as it is warm weather, ferment until we work ourselves pretty clear. [Laughter.]

Mr. ARMSTRONG. Mr. President: The argument of the learned and distinguished gentleman from York contains a very sound argument against the practice to which he would have this Convention return, which is not appropriate to the country districts, however it may be in his judgment appropriate to large cities. Certainly it is a system which was long practiced in this State, and was found to be utterly wanting. I remember to have heard a distinguished deputy under one of the Attorneys General of the State, who held the position and exercised it with distinguished credit to himself and advantage to his county, say that he was compelled to resign, and he gave for his reason among others to the Attorney General of this State that he could not afford to be prosecuting the Democrats at three dollars a head!

I do not know in what manner the amendment proposed is to reach any of the difficulties or the abuses to which the system of prosecution in the counties now is open. The system was tried and tried effectually, and I can see no reason why the district attorneys of the several counties should be appointed any more than judges or other officers. That whole system failed from beginning to end; and, whether wisely or unwisely, the State has grown in the estimation of the people, and I think, properly, far beyond the entire system. The deputy or prosecuting attorneys in the several counties as they now exist, as a rule, discharge their duties with fidelity, and I can see no remedy that exists by going back to an old discarded plan. I do not propose to take any further time in discussion at this time.

Mr. HARRY WHITE. Mr. President: I offered this amendment after consultation with some very distinguished members of this Convention. I offered it, furthermore, because it has the approval of my judgment. I shall not attempt to add to the argument so plainly and so comprehensively addressed to the Convention by the distinguished delegate from York, (Mr. J. S. Black,) but will only say that the philosophy of this amendment meets entirely the approval of my judgment. It is predicated upon the fact that all prosecutions should be conducted in the name of the Commonwealth and by the Commonwealth and under the control of her officials. It has always seemed to me that the theory, which originally obtained in our Commonwealth, of the appointment by the Attorney General of the deputy district attorneys all over the Commonwealth to conduct prosecutions in the name of the Commonwealth, and immediately representing her, was the correct and proper one, and I have never yet heard any satisfactory reason which called for the change. I have no especial object to accomplish by this, more than to preserve, if possible, the harmony of our system in this regard. To-day, notwithstanding we elect district attorneys, the Attorney General of the Commonwealth, the highest law officer of the Commonwealth, is constructively present.

I would furthermore remark that it is not exactly correct for delegates to rise in their place and say that in all parts of this Commonwealth the present system of electing district attorneys has operated well; has met all the necessities of justice. Refer to the statute book and you will find a number of cases where general laws have been passed to meet special cases, authorizing the courts to go over the head of the selected officer of the people, to disregard the district attorney, and appoint a prosecuting attorney themselves; and this was the result of complaints coming from different counties of this Commonwealth, and that authority has been exercised in numerous instances.

Now I submit, in confirmation of what the distinguished delegate from York has said, that there is such immediate connection, a feeling of obligation resting in the breast of the district attorney towards the people who have selected him, that I can imagine instances where a great crime can be perpetrated by his

friends, by the men who have put him in nomination or secured him his election, and I can readily understand the frailty of human nature which under these circumstances will refuse to prosecute; whereas if the prosecuting attorneys for the different counties of the Commonwealth are the appointees of the State government, that feeling of immediate responsibility, that feeling of delicacy, that feeling of obligation to malefactors who may be his neighbors and benefactors will be removed. I can see no objection to the amendment, but shall heartily support it.

Mr. DARLINGTON. Mr. President: I do not mean to detain the Convention for any length of time upon this question; but I want to add my testimony, so far as it is worth anything, to what has been so ably said by the gentleman from York (Mr. J. S. Black.) In my experience in looking at the practical workings of the system of electing district attorneys throughout the country, I think it will be generally acknowledged that the office has fallen into the hands of the young men who would travel farthest and beg most to get it. As a consequence in the prosecution of all criminal cases, however important they may be, the young and inexperienced man finds himself opposed by the older and abler members of the bar, and thus in all criminal proceedings the weight of talent is usually on the side of the thief or the criminal, and the inconvenience which may result and often would result to the Commonwealth is that that justice may not be done. This has been the case throughout the counties with which I have been acquainted.

Mr. KAINE. I wish to interrogate the gentleman.

Mr. DARLINGTON. I believe that is not in order. The gentleman will have an opportunity as soon as I am done. I only wish to recall to the members of the Convention what they all probably know as well as I do, that under that other system of the appointment of prosecuting attorneys by the Attorney General, a very different class of men had command of the prosecutions throughout the State. Go back to the administration of Governor Heister, who made Thomas Elder of Harrisburg his Attorney General. His appointments of deputies throughout the State were of the best members of the bar, men of experience. The same is true of John M. Read when he held the

office of Attorney General. The same is true of George M. Dallas when he held the office of Attorney General. A very different class of men held the prosecuting offices throughout the State from those whom you will find in those offices now. I need not refer to other instances. Such has been my experience and such is the judgment I have formed upon it. I am therefore in favor, if the people could only be induced to come to the point, which I fear they will not, of entrusting the Attorney General with the power of the appointment of his deputies throughout the Commonwealth. They would then be removable *instantly* if they were found incompetent or unworthy.

Mr. MACCONNELL. I merely arise to call the attention of members to the fact that in the article on county officers we have already provided that the district attorney shall be a county officer; shall be elected at the general election and hold office for the term of three years, if he shall so long behave himself well. Now, we shall just go back on ourselves if we vote for this amendment.

Mr. KAINE. I desire to say a word in reply to the gentleman from Chester. I do not know whether the gentleman was in earnest in what he said or not. I think he was not.

Mr. DARLINGTON. I am always in earnest. [Laughter.]

Mr. KAINE. If he was he was certainly entirely mistaken. He does not know anything about the history of the prosecuting attorneys of the State before they were elected or since. [Laughter.] I am well satisfied that the county of Chester has had as good district attorneys since they were elected by the people as ever it had before. I do not care whether they were appointed by Heister or Schultz, or any other Governor in the Commonwealth. I know that my experience in the other parts of the State has been just the reverse of what the gentleman from Chester's was when the Attorney General appointed the prosecuting attorney. The prosecuting attorney, appointed by the Attorney General, was usually some good-for-nothing fellow, who could not draw an indictment or try a case if he had an indictment drawn for him; whereas, now we have good active young lawyers. They are young sometimes, but if the gentleman from Chester will, if he pleases, if he desires, if he dares—[laughter]—come to Fayette county and try a case against the

prosecuting attorney we have there, I will venture to say he will come off second best. So I believe, anyhow, and so far as my knowledge is concerned, I believe it is in every county of the State, at least in the western part of it, and I hope we shall never go back to such a system as we had before.

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

The section as amended was agreed to.

The PRESIDENT *pro tem.* The twenty-third section will be read.

The CLERK read as follows:

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.

Mr. BROOMALL. I desire at this time to offer an amendment, to come in as a new section, and then I wish to say two words on it and go home:

"In all cases of unlawful homicide, and in such other criminal cases as may be authorized by law, the accused, after conviction and sentence, may remove the indictment, record and all proceedings to the Supreme Court for review in the same manner as in civil cases."

That is the shape of the law at present, and it is what those who opposed the gentleman from Montgomery (Mr. Hunsicker) were willing to concede the other day if he had been willing at that time to accept it. I think it wise for us to prevent the Legislature from repealing the present law by making it a part of the Constitution, and it is with that view that I offer this section.

The amendment was agreed to.

The PRESIDENT *pro tem.* The question recurs on the twenty-third section.

Mr. ARMSTRONG. I move to amend, by striking out the word "next," at the end of the third line, and adding it after the word "December," and to add at the end of the section these words, "which shall occur two months after the happening of such vacancy."

Now I desire the section read as proposed to be amended.

The CLERK read as follows:

"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 next succeeding the general

election, which shall occur two months after the happening of such vacancy."

Mr. ARMSTRONG. I will say that this is a part of the second section of the fifth article of the present Constitution. As printed it is in the precise language of the Constitution; but it was found to be inefficient in the regards which the amendment proposes to correct, and it was corrected by provision of law. This amendment is designed simply to put into the Constitution the law as it now stands in connection with the clause of the Constitution as it stands at present.

The amendment was agreed to.

Mr. ARMSTRONG. One further amendment. My recollection is—although I cannot at the moment turn to the precise section—that in consequence of the change which we have already made providing for the general election in November instead of October, the beginning of the term of office has been changed to the first of January instead of December.

Mr. MACCONNELL. That only refers to the county officers and members of the Legislature.

Mr. ARMSTRONG. As the election is to be held in November, instead of October, I think the same rule would apply here with propriety. I would therefore move to strike out the word "December" and insert "January."

The amendment was agreed to.

Mr. CUYLER. I do not like this section. It amounts to the appointment of a judge by the Governor, for whomsoever the Governor appoints will be the party nominee and the man elected; at least that has been all previous experience in our State under such circumstances. As we proceed on the theory that judges are to be elected by the people, I do not want any qualified exercise of that power in any way whatever. I consider this section as tantamount to the actual appointment by the Governor, and that, too, without the aid of the Senate, and for that reason I think there will be less evil in having a vacancy that may last for a few days or a few months than in vesting the appointment in the Governor. Therefore I hope that the election will be left entirely in the hands of the people.

Mr. ARMSTRONG. A vacancy may exist for almost an entire year, and in all constitutions by common consent there is an acknowledged necessity for providing for the supplying of vacancies.

The PRESIDENT *pro tem.* The question is on the section as amended.

The section as amended was agreed to.

Mr. HAY. I desire at this time to offer a new section to come in at this point as follows :

"In the cities of Pittsburg and Allegheny, there shall be but one alderman for every 10,000 inhabitants. Districts of as nearly equal population as may be and formed of compact and contiguous territory shall be established in a manner to be prescribed by law, in each of which districts but one alderman shall be elected, reside and hold office. Their term of office shall be five years. They shall be compensated only by fixed salaries to be determined and paid by the city in which they shall hold office.

"They shall exercise such jurisdiction and powers as are now exercised by alderman in said cities, excepting as the same may be changed or modified by law: *Provided*, That their civil jurisdiction shall not be increased to amounts exceeding one hundred dollars.

"All fees and perquisites received by said aldermen shall be paid by them into the treasury of the city in which they hold office, and be accounted for in such manner as may be provided by law."

Mr. ARMSTRONG. I would remark that I understand this section has been matured by the delegates from Allegheny. I do not know whether I am correctly informed or not.

Mr. HAY. I believe it meets the approval of all the delegates from Allegheny county; I cannot say that they have all matured it.

Mr. J. W. F. WHITE. I will answer for myself that I should favor something of this kind as legislation. I do not think it advisable, however, to insert it in the Constitution.

Mr. ARMSTRONG. Then I would suggest to the gentleman from Allegheny (Mr. Hay) that this new section be withdrawn for the present, printed, laid upon the desks of the members, and renewed at some subsequent time.

Mr. HAY. I have no objection. It can be printed. That was my object in offering it at this time.

Mr. ARMSTRONG. Then withdraw it and let it be renewed at some other time.

Mr. HAY. As we are about to adjourn, perhaps it should remain before the Convention at present, and it may be printed during the interval between this and the afternoon session.

The PRESIDENT *pro tem*. The hour of one o'clock having arrived, this Conven-

tion will take a recess until three o'clock this afternoon.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

The Convention resumed on second reading the consideration of the article on the judiciary.

The PRESIDENT *pro tem*. When the Convention took its recess, it had before it the amendment offered by the delegate from Allegheny, (Mr. Hay,) which will be read.

The CLERK read as follows:

"In the cities of Pittsburg and Allegheny there shall be but one alderman for every ten thousand inhabitants. Districts of as nearly equal population as may be and formed of compact and contiguous territory shall be established in a manner to be prescribed by law, in each of which districts but one alderman shall be elected, reside and hold office. Their term of office shall be five years. They shall be compensated only by fixed salaries to be determined and paid by the city in which they shall hold office.

"They shall exercise such jurisdiction and powers as are now exercised by aldermen in said cities, excepting as the same may be changed or modified by law: *Provided*, That their civil jurisdiction shall not be increased to amounts exceeding one hundred dollars.

"All fees and perquisites received by said aldermen shall be paid by them into the treasury of the city in which they hold office and be accounted for in such manner as may be provided by law."

Mr. HAY. I do not propose, sir, at this time to occupy the Convention by the discussion of the principles upon which this amendment is based. When section twelve of the present article on the judiciary was under consideration the whole subject was thoroughly and exhaustively discussed by many of the ablest members of this body. My desire is to have extended to the city of Pittsburg some part of the system which has been adopted by this Convention for the city of Philadelphia, with some necessary modifications and improvements. Retain the old office of alderman, which it has been decided shall be abolished in the city of Philadelphia, but I propose to have one for every ten thousand inhabitants, instead of one for every thirty thousand as provided in

the section establishing a new minor judiciary system for that city. The reason for proposing that change is this: Philadelphia is a very compact and closely built city, its inhabitants are closer together than they are in Pittsburg and they probably need a smaller number of such officers than we do. The number that is given to us by this amendment is, I think, about twelve in the city of Pittsburg, and seven in the city of Allegheny. We probably need that number, but we certainly do not need the large number now in office in these cities. The office of alderman is a very useful and important one to the peace and well-being of the community, and the office will be rendered more dignified, and more attractive to those who ought to serve in it by having fewer occupants than now, and by having attached to it a certain moderate compensation.

We have seventy-four alderman now in the city of Pittsburg, where twelve would be an abundant number for all our necessities. We have two for every ward in, I think, thirty-seven wards. Is not this statement enough to show that the number is excessive? When I proposed this amendment it was under the impression, derived from conversation with the delegates from Allegheny county on this floor, that the amendment met with their approbation; and I believe yet, that the delegates from the county of Allegheny are agreed in thinking that we need some change in the aldermanic system in our cities, and that the change proposed in this section are about those changes which are required for the improvement of our lower judiciary. The objection that is made to its adoption, by some of my colleagues, is that it is proper matter for legislation. That objection is certainly well founded so far as it goes. If this was the first occasion in this Convention on which it had been proposed to legislate in the Constitution of the State, the objection would possibly be conclusive. But we must remember this, that there has been already adopted by this Convention a section of this article providing for radical changes in the system of the minor judiciary of the city of Philadelphia alone, and that other cities in the State need reform in this matter just as much as does the city of Philadelphia.

There is no more crying evil to-day in the city of Pittsburg than the condition of its aldermanic system. We have many men in office there who are utterly

unfit to hold any office; men corrupt, ignorant, debased, and encouraging litigation of the very worst character every day they hold office. There are two great evils in connection with this matter—the number of the aldermen, and their encouragement of litigation, other evils, such as their ignorance and incapacity in many cases, the people must directly remedy for themselves by electing better men. I propose to reduce their number by providing that instead of having two for every ward there shall be but one for every ten thousand inhabitants in the cities; that they shall be elected in districts to be established in a manner to be provided by law, and that they shall hold office for the usual term of five years. Then I propose in order to remedy the other great evil of their encouragement of malicious and useless and improper litigation, by providing that instead of being compensated as they are now by fees and perquisites of office they shall be compensated only by a fixed salary, and that that salary shall be determined and paid by the city in which they hold office. That would remove the temptation from these men to encourage litigation by which the peace of the community is destroyed, by which crime is encouraged, and by which our courts are filled with business which ought never to reach them, and such litigation is encouraged merely to enrich the alderman or justice by the fees exacted in every case.

It seems to me that the city which must pay the salary of the alderman who will serve in the new districts should also have the right to fix and determine its amount. And I doubt not there are in the cities of Pittsburg and Allegheny many thoroughly competent men of some leisure, probably retired from active business, who would serve the people well in these honorable positions for a moderate and certain compensation. And I trust they will.

I hope that this amendment may be adopted. I do not know how otherwise the city of Pittsburg can obtain the relief which is certainly sadly needed there. In the article upon legislation a provision has been adopted which will prevent the Legislature from giving us any relief in the future. Unless we have it here, we will be forever tied down and fixed to our present system. We have provided that the Legislature shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, bor-

oughs or school districts. Further on it has been provided that the Legislature shall pass no local or special law regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates or constables. And unless there is some more serious objection to this section than the objection that its objects might possibly be substantially provided for by the future action of the Legislature, I hope the Convention will give the city of Pittsburg the relief that she needs. We have no reason whatever to look hopefully to the action of the Legislature; and I doubt whether after our previous action here, that body will have the power, if it had the will, to give us the changes required by the necessities of the case.

I will add just one word further. One or two of my colleagues, with whom I have discussed this subject—I do not know whether they will vote for the section or not—say that there is nothing upon which they have been more constantly approached and besought by the citizens of our county for a change than the aldermanic system of the cities.

Mr. S. A. PURVIANCE. Mr. President: I rise mainly for the purpose of suggesting to my colleague the propriety of withdrawing his proposition for the present. The attention of the Allegheny delegation was only called to it, I believe, this morning, and inasmuch as there is an important section yet remaining of the article on the judiciary which will occupy the time and attention of the Convention this afternoon, I would suggest to the delegate from Allegheny that he would have an opportunity of consulting with the Allegheny delegation by to-morrow, and in that way they would act in some concert.

Mr. HAY. I am very much inclined to think that this article may be disposed of to-day, after which it would be too late to offer the amendment.

Mr. S. A. PURVIANCE. Still the proposition of my colleague can be appended to the main article as well as to come in at any other place.

Mr. HAY. I should have no desire to press this amendment now upon the attention of the Convention, but for my fear that the article may be disposed of to-day and the opportunity for the presentation be lost.

Mr. S. A. PURVIANCE. We can bring it in to-morrow.

Mr. LILLY. I suggest that it be referred to the delegation from Allegheny county with instructions to report on the subject to-morrow morning, for it is a matter entirely for the members from Allegheny county, and I am willing to vote any way they may desire.

The PRESIDENT *pro tem*. The amendment has been journalized, and after an adjournment cannot well be withdrawn.

Mr. S. A. PURVIANCE. I move you that the further consideration of the subject of this proposed section be postponed for the present.

Mr. DARLINGTON. There is no trouble about withdrawing it. We have had no adjournment, only a recess.

The PRESIDENT *pro tem*. It has been journalized, and the Clerk can only reach it by striking out the proceedings in relation to it.

Mr. ARMSTRONG. There has been no action taken on it.

The PRESIDENT *pro tem*. There has been no action taken, and the entire proceeding may, therefore, be withdrawn. Does the gentleman from Allegheny withdraw the amendment?

Mr. HAY. No, sir; I do not withdraw it. I apprehended that it may not be possible for me to be in the Convention in the morning to bring this matter to its attention again at the proper time, and I desire very much to cast my own vote upon this question, whether the amendment is adopted by the Convention or not. I will, however, have no objection to withdrawing it from present consideration, if I can have an understanding with some one of my colleagues to present it at the proper time, and have the vote taken by yeas and nays.

It is a very simple proposition. It embraces but two ideas. One, the reduction of the number of aldermen in our two cities of Pittsburg and Allegheny; and the other, that they shall be compensated only by fixed salaries instead of as now by fees. I see no reason why these two ideas cannot be thoroughly comprehended in ten minutes. This is a subject that can be just as well disposed of now as on any subsequent occasion. The whole principle affecting it has been thoroughly discussed heretofore on two or three different occasions, and why members cannot vote now as well as at any other time I cannot conceive. So far as I am personally concerned, I much prefer that it should be disposed of now, and if my colleagues are not inclined to

favor it, of course I cannot help that; they must do as they think right; but my desire is to have the vote on my proposition while I am here present.

Mr. J. W. F. WHITE. I should much prefer that this matter should go over. My colleague showed me his proposition this morning at my desk, and I read it over hastily. While there are some features of it as a general plan that struck me favorably, I expressed then a doubt as to the propriety of putting it in the Constitution, and further reflection has only confirmed the misgivings I had in my mind then. I am free to say that I am not sufficiently familiar with the circumstances or necessities of our two cities to say that the number of aldermen proposed here is the proper number. The section proposed by my colleague will change the entire system of our two cities.

Now, while I believe that there ought to be some modification and some reform in the system in our cities, and in Philadelphia and other large cities, I am inclined to think that the difficulty is not so much in the present system as in the persons who are elected under it. I believe that our system of justices of the peace and aldermen, for the aldermen are only justices of the peace in cities, is a very good system. I should like to have a homogeneous system throughout the State. I was not in favor of a special aldermanic or police court system for Philadelphia. I have felt from the beginning unwilling to have these special regulations for particular localities of our State. I believe it to be wrong in principle. The better plan is to have a uniform general system throughout the entire State, and I believe it would be better that the cities should have the same general system we have in the country. However, the delegates from Philadelphia insisted on a different system, and the Convention yielded to their wish. I had my doubts then whether the system proposed by them would prove an advantage or not. I still have very serious doubts about it.

The old system is well known throughout the State, and where there are good men elected as justices of the peace or as aldermen I know of no objection to the system. The great objection, I repeat, is to the character of the men who are elected to these offices. That is a matter that can be remedied by the people whenever they desire to remedy it. If that system

needs some modification the Legislature can modify it; but if we fix it in the Constitution it is beyond change or remedy, except as we may leave it open for legislation, and if we are to leave it open to legislation why insert it in the Constitution?

Another reason why I hesitate at this time to accept the proposition of my colleague is that it recognizes the city of Allegheny as well as the city of Pittsburgh. It is a constitutional recognition of those two cities. Perhaps they may have to continue as separate cities. I do not know how my colleague himself stands on the question; but I believe every other good man of Allegheny county is in favor of consolidation. The two cities ought to be consolidated, and no doubt will be consolidated in course of time.

Mr. HAY. Does my colleague say that this section will prevent consolidation?

Mr. J. W. F. WHITE. I do not know what effect it might have upon that question. I do not think we ought to insert in the Constitution a provision that Allegheny city shall have—

Mr. HAY. I desire to state to my colleague that I believe I am the only delegate from Allegheny county who lives in Allegheny city, and I want Allegheny city to be recognized.

Mr. J. W. F. WHITE. Perhaps for that very same reason my colleague might wish it to be recognized for all time to come, and this might be one of the arguments against consolidation.

I repeat, Mr. President, that I would have preferred that this matter had gone over until the members from Allegheny county had a consultation over it. It is new here. Our people, so far as I am concerned, have not asked for this. I have heard nothing from our cities asking anything of this kind. On the contrary I believe an amendment proposed by my colleague to the left, (Mr. Ewing,) at least when the article was on first reading, looked forward to legislation in reference to the cities that would meet the object aimed at by my colleague on the right, (Mr. Hay,) and if the vote is insisted upon at this time I think I shall have to vote against it. I shall vote against it at present, because it is new to me. I think it is new to most of our people, and I am not at all satisfied that this would entirely meet their views. For these reasons I shall vote against this section.

Mr. MACCONNELL. Mr. President: I admit that our aldermanic system in Pittsburg works badly, and needs to be changed if any change could be contrived that would be an improvement.

My colleague from Allegheny showed me this morning the plan he proposes, and at first sight it struck me favorably. Further consideration of it, however, has changed my mind in regard to it.

I have several objections to it. It is a special provision confined exclusively to the two cities in Allegheny county. It is special legislation in the Constitution, and I am opposed to such legislation either by this Convention or the Legislature. On that ground I dislike the special provision that was adopted for Philadelphia and opposed it all the way through. I am in favor of all our laws, whether organic or otherwise, being general, and applying to all parts of the State alike. I would establish no law for any one part in regard to any subject. I would have all the parts live under and be governed by the same laws, administered in the same way, by the same class of officers and through the same forms. That, in my opinion, is the only way to preserve equality among all and do like justice to all.

The Convention saw proper to provide a special system for Philadelphia. That is no reason why it should adopt another for the cities in Allegheny county. We have a remedy that we can apply to our delinquent aldermen that I suppose they have not in Philadelphia, and it is a very potent one. We have in our county a penitentiary and a work-house, and we occasionally honor them by giving them an alderman for an inmate. Then we are not nearly as corrupt as Philadelphia.

The Convention has established a special system for Philadelphia, and now it is proposed to establish another for Pittsburg and Allegheny. If we carry out this proposition may not each other city in the State come before us and ask for a special aldermanic system for itself, and on what ground could we refuse the demand? Other cities will have the same right to demand special provisions in their behalf as Philadelphia or the cities in Allegheny county. I think we have gone too far already in doing what we did for Philadelphia, and that it will be unwise to go any further.

For these reasons, and others which I will not detain the Convention by advertising to, I will vote against the section.

Mr. CUYLER. Mr. President: A single word. We have heard a great deal in the Convention at different times with reference to making special provisions for special localities, and it is uttered in the ears of gentlemen as if it were a very dreadful thing. Now I wish some gentleman would assign some logical reason why we should not make special provision for special cases, or I wish some gentleman would give some logical reason that would justify us in omitting to do so, because just so long as the aggregation of seven hundred thousand or eight hundred thousand people in some particular spot, with the peculiar rights, interests and relations that result from that circumstance exist, just so long a system that will apply to a sparse country population of farmers will fail to be applicable to the aggregated mass of citizens, and if our Constitution is not adapted to special localities and special circumstances it will of necessity be a failure, because it will ignore entirely a condition of things that certainly does exist and that always will exist, and that our Constitution will be defective if it does not provide for. Therefore I think that the utterance of an apprehension on that subject, which seems to regulate the votes and affect the minds of gentlemen, will pass away, because it seems to me an utter folly.

I am not at all surprised that my friend from Allegheny county (Mr. Hay) should have been jealous of the well developed system that we have applied successfully to Philadelphia. It is very natural that he should, and I think that the system will grow and spread, and that other populous localities will need the same thing, and that was the very apprehension which the gentleman from Allegheny (Mr. J. W. F. White) just now indulged in. The system provided for this city will demonstrate its usefulness, and all places of large aggregated population will need in substance just such a provision as we have introduced in reference to Philadelphia, which I think perfect except on one point. I still insist that the magistrates therein provided for should be judges learned in the law. While we have accomplished much that is desirable, I, for one, shall always think that we have failed to accomplish all that is desirable by striking out that provision. If these men are to pass upon judicial rights, upon rights that are the proper subjects for judicial tribunals, the men

who are to decide upon them should, I venture to believe, be men learned in the law,

Instead of regarding that as a disqualification, as some gentlemen do, it ought to have been considered the highest possible requisite. But that has been decided; and as a Philadelphian, and having been the author of that section, I shall feel all ways that if we have failed to accomplish all that might have been done, we have still accomplished a great deal so far as it does go.

Mr. WM. H. SMITH. I do not know whether my colleague intends to press his amendments or not. That is for himself to decide. Nor do I know whether it is better that he should do so. But this I know, that he has attempted to remedy what is a notorious grievance, a very great and mortifying abuse that prevails in our city. The character of the aldermen of the city of Pittsburgh—and I have lived there for forty-five years and I know a great deal about that matter, having been in active business all that time—the character of justices of the peace has deteriorated just in proportion as the responsibility of their office has increased. I very well remember when it was considered an outrage, a great and dangerous stretch of power, for an alderman to make a summary conviction of a man for anything. He had to call witnesses, responsible witnesses, other than a single policeman, and something had to be proved against the man before he would venture to punish or to commit him. But that process became too slow, and with the increasing responsibility and power of the aldermen of the city of Pittsburgh, their character has confessedly degenerated, and grown worse from day to day, from year to year. It may be that a great many persons think that because there were two aldermen in each ward we could stand one incapable or corrupt man in the aldermanic office, and trust to the other to counteract whatever evil he might do. But we have found, unfortunately for that theory, that both have turned out to be equally bad, equally unfit, and equally untrustworthy.

I say here to-day, and I say it seriously, I say it more in grief than in any other spirit, because it is a grievous declaration to make, that I do not know five aldermen in the city of Pittsburgh that I would trust to collect a debt to the extent of twenty dollars and to pay it over. [Laughter.]

Mr. HANNA. They are worse than in Philadelphia. [More laughter.]

Mr. WM. H. SMITH. That could hardly be, but I will modify that statement and say ten instead of five; but sincerely I do not know ten aldermen in the city of Pittsburgh whom I would trust to collect a debt to the extent of twenty dollars. I say it in sorrow, and not in any vindictive spirit; but if there is a lawyer present who is familiar with the aldermanic system and customs and incumbents of the city of Pittsburgh—and there are in our delegation several members of the bar of that city—he will bear me out in the statement that if he had a little claim of under one hundred dollars to collect he would scarcely know to what alderman to go to have it collected *and paid over*. They have been continually growing worse under the elective system. I have opposed the elective system of judges because the experiment has utterly failed, as I believe, as applied to the judiciary, including Pittsburgh aldermen; but if we must elect the judiciary, I think we had better elect the judges than the aldermen. I only remember one striking instance in which an incompetent man was appointed by the Governor as an alderman. He was certainly below the average, for he was quite as ignorant as a man could be, and I recollect when we used to talk in Pittsburgh about Squire Wallace, who was about the last worst specimen of the appointive power as long as it lasted. He obtained his place, it was said, by appending the petition for a new turnpike to his application for the office of justice of the peace!

Now, in regard to leaving this matter with the Legislature. Some people believe in the Legislature and some do not. I, for one, do not believe in trusting any reform to the Legislature that it is evidently necessary to make, and which I have seriously at heart. I do not agree with my colleague (Mr. J. W. F. White) that the Legislature is quite as good as it was twenty years ago. I certainly believe it is worse, very much worse. It is notoriously more corrupt. If there were persons bought and sold twenty years ago, in the Legislature, there was nobody who dared to say so, and everybody dares to say so now. I do not believe that a nomination such as was made in Philadelphia for the Legislature two or three weeks ago would have been endured in Pennsylvania twenty years ago; nobody would have submitted to it, and

yet that loathsome infamy has taken place here! And why? Because the Legislature has become so degraded that such a nomination as the one I allude to does not seem so *very* outrageous.

Now, I will not trust the Legislature with any much-needed reform, and gentlemen here seem to agree with that view. I notice the care which any gentleman takes who has any measure at heart to see that the reform is secured *here*; he wants the thing fixed up certainly; he does not intend to leave it open to the Legislature to do or to ignore, and so my colleague (Mr. Hay) in his idea of not leaving this matter to the Legislature. In this he is right, for this is a great grievance; it is a thing that needs to be remedied. It does not take twenty-four hours or twenty-four minutes to find out the defects in the aldermanic system of Pittsburg; and we are just as ready to vote on it now as we ever shall be. Still if my colleague wishes to withdraw the amendment I have nothing to say. I must, of course, leave it with him; but this I say, that I differ with my colleague (Mr. J. W. F. White) in the notion that the Legislature has been incorrupt, if we are to judge by what they have done for the last ten years. If this thing is to be done, if this reform is to be instituted, some means must be taken to elevate the character of the aldermen and lessen their number.

If this reform is to be accomplished I do believe, and I join with my colleague (Mr. Hay) in that belief, that it ought to be done by this Convention; and I will repeat that whenever any gentleman here sees something to propose that is near to his heart and wants carried out, some great evil that he wants to remove, some great abuse that he wants to remedy, he is very careful to put it in this Constitution, and not depend on the tardy or tricky action of the Legislature.

I do not wish to prolong the discussion; I have already taken up more time than I intended; but I do declare that there is great room for reform in our aldermanic system in Pittsburg and Allegheny cities, and I do think that the Convention should listen to us here in what we have to say about it.

I am not of opinion, with the gentleman from Carbon, that these things ought to be referred to the delegates from Allegheny county at all. That is the corrupt habit which has obtained in Harrisburg, where members from a certain locality would say to other members, "now what

do you want; we leave you to fix up your own jobs," and the most abominable abuses have been practiced and carried out under that system. This, of course, is not an abuse that prevails in this body, but I do not like to see this body put on a level with the Legislature and to adopt the ways by which they usually carry on things in Harrisburg. No matter how outrageous the proposition was, some man would get up there and say "I want this done; it is for me; and for (or against) my section; and if you do not do it I will watch you; my friends and I will see that you do not get anything you want." Through that slimy system the most abominable abuses have been perpetrated at Harrisburg. I do not like such a practice, and therefore I would rather this matter, which all members can see is an abuse that requires correction, corrected by the whole Convention, and not referred to the members from Allegheny.

Mr. LILLY. I should like to explain. The explanation I desire to make is that I know the character of the delegates from Allegheny so well that I am very willing to trust the interests of Allegheny county in their hands, and I believe they will not go wrong. I deprecate the abuses at Harrisburg as much as the gentleman who has just taken his seat, but I think that the material that has been sent to Harrisburg for the last eighteen or twenty years is a very different material from that which Allegheny county has sent to this Convention, and that was the reason I was willing to submit the question to the delegates from Allegheny.

Mr. EWING. Mr. President: Among the many sensible things that the delegate from Carbon has said, what he has just now said is perhaps the most sensible of all. [Laughter.] In regard to the proposition before the House, I took occasion some time ago in Convention to state the general outline of my views on the subject of aldermen in cities, and the proposition submitted is very completely in accordance with what I would like to see adopted as a legislative provision.

My impressions at present are that we are entirely safe to leave that to the Legislature, but I shall vote for the proposition *now*, so that it can come in shape, trusting that if it is not satisfactory then my colleague will agree that it be withdrawn or voted out on third reading.

There is one thing it seems to me we had better change. It requires an alder-

man for each ten thousand inhabitants. Now, would it not be better to say—I do not know where it would come in—that there shall be not more than one alderman for each ten thousand, that the districts might be larger but not smaller. My present impressions are that it is a subject that ought to be left to the Legislature, but I am willing to vote for it to get it into shape.

Mr. ARMSTRONG. I am one of those in the Convention who believe that where sufficiently strong reasons are presented it is highly expedient to distinguish between the immense and highly concentrated population of the cities and the scattered populations of the rural districts; and such I conceive to have been the necessity that applied to Philadelphia, embracing a population of nearly one-fourth of the entire State; so also Allegheny, embracing nearly one-tenth of the population of the State; but the difficulty seems to be that the persons who are most interested in this question have not agreed upon a plan which they conceive to be to their advantage.

If the gentlemen from Allegheny were agreed in saying that the section proposed by Mr. Hay would meet the difficulties appertaining to their aldermanic system, I, for one, should vote for it; but it is so entirely within the province of the Legislature, and no sufficient reason having been given why it should be taken without the province of the Legislature, it seems to me at present it would be wise to reject the proposition and let it come up after a more deliberate consideration by those who are more particularly interested in it. We shall probably not get through this article to-night, and at present it is better not to adopt the amendment.

Mr. HAY. I desire to say one word before the vote is taken, and that is that I hope no member will vote under a misapprehension of the effect of his vote. So far as I can understand the Legislature will have no power hereafter to grant us any relief. They can pass no special or local law which will change the aldermanic system of Pittsburg and Allegheny alone. The Convention has prevented their doing that; and I do not believe that we should have any reasonable hope of securing any reform from the action of that body if they had the power. It is not likely that local representatives, who may be more or less under the influence of their local politicians—as legislators

are now elected—would be very apt to carry out a reform which would or might affect their influence at home. We must remember that the seventy-four aldermen of Pittsburg are seventy-four active and, in some cases, unscrupulous politicians, men who at times may be able to control the election of the legislators that are sent to Harrisburg. It is not very likely that the members who may be sent under such influences are going to offend their masters by taking away their offices. The members who vote against the section which I have proposed will vote against the reform, not against the mere plan proposed, because there is no other mode of accomplishing it than by the aid of this Convention. I call for the yeas and nays.

Mr. S. A. PURVIANCE. Before the yeas and nays are taken, I wish to say a word in reply to the gentleman who has just taken his seat. One thing is to be considered. So far as regards the change made applicable to Philadelphia, it is a notorious fact that Philadelphia came almost in a body before the Judiciary Committee and made complaint. Men of the highest respectability appeared before us and laid before that committee their grievances in this respect. They gave us the character of their aldermen, and they laid before us the necessity of a change for the better. But, sir, so far as regards the aldermen of Allegheny and Pittsburg, I have lived amongst them for the last twelve years, and I am utterly unable to confirm the statement of my colleague. I know of no such complaint, and I submit to this Convention whether, in the absence of any applications from Pittsburg or Allegheny on the subject, there should be a system fastened upon them without their being heard. In the case of Philadelphia they were heard; in the case of Allegheny county they have not been heard. I trust, therefore, that the Convention will vote down this proposition.

The PRESIDENT *pro tem*. On this question the yeas and nays are called by the delegate from Allegheny (Mr. Hay.)

Mr. EDWARDS. I second the call.

Mr. W. H. SMITH. I ask my colleague (Mr. S. A. Purviance) whether if he knew of a crying abuse, an open evil, an abominable shame to his constituents, he would feel it his duty to remedy it in this Convention if he could without any application from them?

Mr. S. A. PURVIANCE. I would certainly give the proper remedy.

Mr. W. H. SMITH. Then I charge this system to be just what I have said.

Mr. S. A. PURVIANCE. I say this proposition has been sprung upon the delegation from Allegheny county this morning, and they have not had time to consider it. That is all they ask.

Mr. TURRELL. I beg leave to say in behalf of myself and several gentlemen around me that we should like to vote with the delegation from Allegheny on this subject, but they disagree among themselves, and for the reason given by Mr. Purviance, that this proposition is brought in here at a late hour, we shall feel under the necessity of voting against it.

The question was taken by yeas and nays, and resulted as follows:

Y E A S .

Messrs. Alricks, Baer, Bailey, (Huntingdon,) Black, Charles A., Boyd, Brodhead, Buckalew, Bullitt, Clark, Corbett, Curtin, Cuyler, Dallas, Darlington, Elliott, Ewing, Funck, Gibson, Guthrie, Harvey, Hay, Howard, Kaine, Lamberton, Landis, Lilly, Long, M'Clellan, M'Murray, Metzger, Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N. and Worrell—45.

N A Y S .

Messrs. Armstrong, Biddle, Broomall, Carter, Cochran, Corson, Davis, De France, Edwards, Fulton, Gilpin, Green, Hanna, Hemphill, Horton, Lawrence, Littleton, MacConnell, Mann, Mantor, Newlin, Palmer, G. W., Patterson, D. W., Purviance, Sam'l A., Simpson, Turrell, Walker, White, Harry, White, J. W. F. and Wright—30.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Bailly, (Perry,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Bowman, Brown, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cronmiller, Curry, Dodd, Dunning, Ellis, Fell, Finney, Hall, Hazzard, Heverin, Hunsicker, Knight, Lear, MacVeagh, M'Camant, M'Culloch, Minor, Mitchell, Mott, Niles, Palmer, H. W., Porter, Purviance, John N., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Runk, Russell, Smith, H. G., Stanton, Struthers,

Van Reed, Woodward and Meredith, President—58.

The PRESIDENT *pro tem*. The next section will be read.

Mr. ARMSTRONG. Before the next section is read I would suggest to the Convention that, by unanimous consent, the twenty-first section should be divided at the word "determine," in the twelfth line. It is appropriate that it should be made into two sections.

The PRESIDENT *pro tem*. If there is no objection it will be so divided.

Mr. HARRY WHITE. I object.

The PRESIDENT *pro tem*. The Chair hears objection.

The CLERK read the next section as follows:

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.

Mr. KAINE. I offer the following amendment, to come in in the seventh line, after the word "provide:"

"Courts in banc shall be held by three judges of said districts, or a majority of them, 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 oldest in commission and senior in age, shall preside."

That is a part of the amendment which I offered originally; and as it is desired by many members of the Convention that the original section as it is here, section twenty-four, should remain as it is, that each county having a population of 30,000 shall be a separate judicial district, this provision, if adopted, will enable the judges of adjoining districts to hold courts in banc for the decision of such questions as may be provided by law, leaving the whole matter to the Legislature. The subject has been discussed, and it is perfectly

understood I believe by every member of the Convention, and I shall not detain the Convention with more than a very few remarks on the subject.

I hold it, Mr. President, to be of the utmost importance to our courts of common pleas to have for the rural districts exactly what the Convention has adopted for the city of Philadelphia. The courts here are divided into divisions of three—four courts consisting of three judges each. Those judges, of course, hold separate, independent courts as courts of common pleas; and then the three judges of each court meet in banc for the hearing and decision of such questions as may be provided by law. It is good for Philadelphia, and I think, perhaps, it will work better in the country. Take the case of six adjoining counties, composing three judicial districts, with one judge to each two counties. Let each district elect its own judge, and then let the Legislature, under this constitutional provision, provide for the meeting of these judges at such times as they may see fit in the several counties composing those three districts to hold courts in banc for the hearing of causes such as will be heard by the courts in banc here in the city of Philadelphia. It strikes me that it will be a very great improvement on our present system, and will be very advantageous to the people at large.

Mr. BOYD. Mr. President: I hope that this amendment will not be adopted, first, because of the difficulty in getting these three judges together. Take away three judicial districts in this State of any importance whatever, and can you expect the judges of those three districts to be able to meet at a time which will be convenient for all of them? It will be a matter of very great difficulty; and the consequence is a very obvious one, that those cases that are referred to this court in banc will necessarily be very greatly delayed.

Now, you take Lehigh and Northampton, which are one judicial district, Bucks and Montgomery, which are another, and Chester and Delaware, which are another, all adjoining. The business which each of these three judges has to transact in those six counties is very great, so great that in our county we have a court the first Saturday of every month besides the four regular terms, the four stated adjourned terms, and special courts for special purposes intervening. So I apprehend it is in the other two judicial districts which I

have named. Now, it will be a practical delay, if not a denial of justice, in a great many cases that have to go before these three judges, because of the difficulty of getting them together so as to suit each other's convenience, and so as to enable them to transact the business in their own districts and attend to this at the same time.

Then there is another very decided objection to this course. Take a case that has been heard and determined by one of the judges in his district; he has pronounced a judgment upon it, and then it is referred to the two judges and himself; it is plain, therefore, that in nine cases out of ten the judge who sits with the other two—I mean the one who has decided the case, sitting with the other two before whom it has not been heard—and as a matter of course the influence of the judge who has heard and decided the case with the other two judges will be very potent. Everybody who takes a case to an appellate jurisdiction wants that court, whatever it may be composed of, to be of men who know nothing about the case. He does not want the judge there who has already decided it below, and who has prejudged it to influence it to represent, fairly if you please, to the other two judges how the case stands and how it ought to be decided, all tending to show that his decision should be affirmed.

Now I know that Judge Woodward's scheme was something like this: The judge, whose case was on review, should be considered as assessor, and he should simply sit there, somehow or other, as assessor. As I took occasion some time ago to remark on this subject when it was up, the assessor was nothing more nor less than the judge who had heard the cause, and he would be there, so to speak, assessing nothing, but to see his ruling confirmed by the other two judges.

I hope the Convention will vote down the section without hesitation.

Mr. ARMSTRONG. I think that the amendment of the gentleman from Fayette is a bright and shining example of the virtue of persistence. This is, I believe, the third time that we have been called on to vote upon what has been substantially the same question.

Mr. KAINE. This is only a branch of it. [Laughter.]

Mr. ARMSTRONG. The gentleman calls this a branch of it, but it is the same question. It has been discussed fully, and I do not propose to debate it further.

I simply look upon it as an attempt to introduce the proposition, already voted down, in its most objectionable and most useless form, and I trust that the Convention will not adopt it now.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Fayette.

The amendment was rejected.

Mr. BUCKALEW. I rise to speak against this section and to express the hope that it will be rejected by the Convention in its present form or in any form which shall retain its substantial features.

I have several objections to this section, which I will state in as few words as possible. In the first place, I think this apportionment of judges to the several parts of the State is to be made upon a wrong basis. Judicial service is to be assigned to different parts of the State in proportion to population. Counties containing 30,000 inhabitants are to constitute separate judicial districts, and additional judicial force is to be provided for counties containing much larger population, from time to time, at the discretion of the Legislature. This is the scheme, with the exception that counties falling below 30,000 in population are to be united together, or attached to counties adjoining them. The basis of this scheme is wrong. The number of people in a county does not measure the necessities of that people for judicial service. Nothing can be more certain than that, and I might illustrate my statement by numerous examples. My own county would be entitled under this section to a judge, for it contains 30,000 inhabitants. Yet our president judge would not be employed holding court more than eight or ten weeks in the year, and if you assigned him the duty of auditing the accounts filed in orphans' court he could not possibly consume more than four or five weeks more. How absurd to send out such a provision as this to the contemplation of our people in different parts of the State!

Our judge, as I said before, performs the business of our county and of two other counties, and then a part of his time he is employed in holding special courts in Schuylkill, Luzerne, Northumberland and other adjoining counties. Our county has about thirty thousand inhabitants, and the amount of judicial business I have mentioned. Now, take Wyoming, with but fourteen thousand inhabitants, and for ten years past, steadily, all the time, the business of that

county has been fifty per cent. more than that of Columbia. That is, fourteen thousand people have fifty per cent. more business in one county than thirty thousand inhabitants have in another. This illustration lies right at home under my own eyes, and is decisive with me against the whole plan of this section.

Take the district presided over by Judge Dreher, composed of the counties of Carbon, Monroe, Pike and Wayne. That judge has said that he has not work enough to occupy his whole time. He says so, I am informed, to gentlemen representing his own section of the State in this Convention. But under this section Carbon county would be entitled to a judge and Wayne to a judge.

Mr. S. A. PURVIANCE. The population of Carbon is not large enough.

Mr. BUCKALEW. Certainly it is. She has thirty thousand inhabitants. She had nearly that on the last census, and I am told has over thirty thousand now. In addition, therefore, to a judge in Carbon and a judge in Wayne, Pike and Monroe are left to form a third district, which, under this section, could be done by uniting them, and you have three judicial districts formed of what is now but one, and one that does not occupy the whole of the time and attention of the judge during the entire year. There is no relation between the number of population in a district and the amount of judicial service which is required for the transaction of its legal business.

Another objection to this section, and, if possible, a still stronger one—because the one I have mentioned is very much a matter of expense and of inequality of service—is this: That under this section the character and capacity of your *nisi prius* judges would fall down. You will have, upon the whole, throughout the State, men of inferior capacity selected for discharging the duties of president judge.

If you make all these counties of thirty thousand and forty thousand inhabitants into independent judicial districts, you will find that in one-third or more of them there are not competent men at the bar for the office of president judge. Yet the members of the bar of the dominant party in the county will all think they are competent, and some one of them will go out, button-holing the people through the county, and will secure the nomination. These little lawyers will be slipping upon the bench all over the State, and you cannot prevent it as you can

now. When you have several counties together in a district—as in my own district, which includes four counties—if an unfit man is nominated in his own county, the others can check his ambition. Very often now, by conferences between counties, a gentleman resident outside the district is called in to serve the people, and in that manner very competent men are selected. But where a nomination depends upon one convention, in a small county, perseverance in canvassing for a nomination by some active man, perhaps unfitted for the position, will be the end of the whole question of selection.

I am also opposed to this section because it abolishes without any popular demand the office of associate judge. Now, sir, I shall not go into the argument on that question. We have no associate judges at present in Philadelphia or in Allegheny, and the Legislature can abolish that office if there is a popular demand for it, and I am disposed to leave the subject with the members of the two Houses. In counties where a president judge does not actually reside, every one agrees you must have these officers. They are required to approve bail in every stay of execution; they are the proper officers to give information to the president judge or themselves to act upon questions of security to be given by all trustees, executors and administrators, and others. Their local information and knowledge is necessary in the appointment of numerous persons for the discharge of duties as viewers of public roads, commissioners to lay out townships, to act with reference to the erection of school districts, and for various other purposes. They are useful and necessary in the criminal courts to assist the president judge in the administration of the criminal law in many respects, particularly in the sentencing of offenders.

The PRESIDENT *pro tem*. The gentleman's time has expired. ["Go on."]

MR. BUCKALEW. Mr. President: I am opposed on principle to invading the rule at this stage of our sessions.

MR. HARRY WHITE. I am earnestly in favor of this section and the principle it represents. I confess to great surprise at the earnest opposition of the delegate from Columbia. If it is not in bad taste I will say that I have gradually become in favor of the section from some opportunities of observing the operations of our judicial system in the several parts of this Commonwealth and the demands for judicial relief.

I will not pause at the outset to pay a tribute to the character of our judiciary further than to allude to the high esteem in which our system is held not only in the Commonwealth, but in the nation. I will not willingly do anything which would detract from the high character of the Pennsylvania judiciary. But, Mr. President, some relief must be had. Complaints come up from all parts of our State for additions to the present judicial force for the administration of justice is imperatively demanded. Every delegate here regrets the business of his district as being far behind, and in some districts, at all events, the delay in this respect is equivalent to a denial of justice. These complaints may be exaggerated in many instances; but in some instances cases of long standing are to be found on record which have never thus far been tried, and probably never will be. There are few courts, indeed, in any district that I know of where an action can be tried within a year from the impetration of the writ.

This condition of public business absolutely requires a change. How is it to be had? The answer is apparent, by adding to our judicial force in such a way as not to invade the harmony of our system. How is this to be done? It is proposed in the section under consideration that each county containing 30,000 inhabitants shall constitute a separate judicial district and elect one judge learned in the law; and that any county having a larger population than this shall be relieved by assistant judges as the Legislature from time to time discovers the necessity; and the office of associate judges in counties that are made separate judicial districts is hereby abolished. That is the principle. That is the extent of the proposition immediately under consideration, and it meets my approval.

What is the objection to this? Complaint is made that this will render the office of president judge undignified, that it will unnecessarily multiply the number of the judges of the Commonwealth and reduce them to the *status* of aldermen or justices of the peace. I have taken the trouble of making a little table of the counties that will be entitled to separate districts. I will go over them hastily, for I have but little time for discussion. I discover the counties of Crawford, Beaver, Mercer, Venango, Westmoreland, and other counties—I shall not stop here to read them all—in the aggre-

gate making fifty-one judges, including the counties of Allegheny and Philadelphia. By referring to the statistics to-day I discover that under the present system the number of our law judges in our districts as at present constituted is fifty-five. Under the single district system, adding Philadelphia and Allegheny, and Luzerne, Schuylkill and Lancaster, we shall have but fifty-one. In addition to that, however, there are fifteen double districts, and those fifteen double districts of course have an additional judge. That, added to our fifty-one, would give us an entire judicial force in the courts of common pleas of the Commonwealth of sixty-six judges, while under the present system we have fifty-five. The proposed change will be an increase of just eleven judges to our present judicial force.

I submit, Mr. President, in view of these facts, which are of easy demonstration, the argument that this is an unnecessary increase of the judiciary, and will render judicial position undignified and of trifling character, cannot be sustained. Many gentlemen are disturbed by the matter of expense in the administration of justice by reason of this radical change. How is this? I hold in my hand the Auditor General's report of the last year, and I discover the expenses of our judicial system for the past year was in the aggregate \$289,117 25. Mark you, this is not including the expenses of the Supreme Court, but merely the district courts, the common pleas, the special courts and the associate judges, for whom we pay \$60,117. That is the expense of the judiciary of Pennsylvania under the present system. How will it be under the system we propose in this respect? We propose to make sixty-six judges, and it is fair to presume that their salaries will be continued as at present, \$4,000 per annum. This aggregates \$264,000.

That relieves us, however, of the expense of the salaries of the associate judges of the different counties. Thus we have under the proposed system \$264,000 against \$289,172 under the present system. That leaves a difference of expense in favor of the proposed change of \$25,000. But we have provided for certain double districts, and under the computation which I make there will be fifteen of them. Of course, we have provided for retaining associate judges there, and it is fair to pay the expenses of those judges for some time to come. That will make thirty judges, two to each county, at an

average salary of say \$4,000 a year, which will aggregate \$12,000, still leaving a balance on the side of economy in favor of this proposition of over \$13,000.

I submit then, Mr. President, in view of the fact that this proposition invades so little of our present system that it is substantial economy, and that some change is absolutely required to bring up the business of the different judicial districts; that this is the best possible change we can make.

Some persons may say: "A population of thirty thousand is too little; make it bigger, and I will support it." Why, sir, it is remarkable, if you take up the map and glance over it, the trifling change which fifty thousand makes in this regard. A population of thirty-five thousand makes no change whatever, except, possibly, of one. Forty thousand makes, possibly, a change of one more; so that we might all agree that at least forty thousand ought to compose a judicial district; and yet in view of the fact that practically we gain nothing by it, it is unnecessary to stand here and higggle upon that which is entirely an abstraction.

Some people say that this is a false principle to go upon: the basis of population does not regulate the necessities of the district. Mr. President, from time to time, as a delegate, I have sat here and heard eloquent gentlemen declaim that because of the increase of our population, because of our multiplying industries, some changes in our government in other respects were required. The increase then of our population, of manufactures, of railroad communications, the rapid development of our resources, the great and tedious delays of our legal proceedings, all speak trumpet-tongued in favor of the policy of the system which is now submitted to this Convention.

Some people will say, again, that these judges will have nothing to do to occupy their time. I care not. Take the county of Indiana, if you please. I have no selfish interests whatever in this matter. Take the county of Bucks, if you please

— The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. BROOMALL. Mr. President: This section proposes to do two things, and I desire the Convention to direct its attention to those two things. It proposes to leave the whole matter to the Legislature except, first, that it compels the Legislature to make a judicial district of every

county that has a population of thirty thousand, and, second, it prevents the Legislature from continuing the associate judges. That is all that it proposes to do. Beyond that everything is to be left to the Legislature, and the only question for us to consider is the propriety of these two changes. I entirely agree with the gentleman from Columbia (Mr. Buckalew)—

Mr. S. A. PURVIANCE. Will the gentleman allow me to ask him a question?

Mr. BROOMALL. Certainly.

Mr. S. A. PURVIANCE. Does not the language of the section create the district without submitting it to the Legislature at all? That is, having thirty thousand population, of itself, constitutes a district.

Mr. BROOMALL. Certainly; that is to be inferred from what I said. It controls the Legislature in those two points. Everything else is left to the Legislature. The Legislature is to decide how many judges forty thousand shall have; how many judges fifty thousand, sixty thousand and seventy thousand shall have; but thirty thousand must have one judge, and no county forming a judicial district, however badly it may want them, can have associate judges not learned in the law under this provision.

I agree with the gentleman from Columbia (Mr. Buckalew) in his entire argument. He touched upon both these things. I think the way to make the judges small judges is to give them little business and small districts. The gentleman from Columbia referred to his district; I may refer to mine. My own county, by this provision, will get a judge, and if you give a judge to every thirty thousand inhabitants it will get about a judge and a quarter; and yet it is only one-third of a judicial district, the judge of which has very little over half work.

I mention this for the purpose of showing what the gentleman from Columbia so well said, that population affords no criterion for judging of the amount of business. It is utterly impossible for us to assign judges according to population. There are districts where fifteen thousand might require a judge, and there are districts where one hundred and fifty thousand would require no more than one judge. Hence it is that I am opposed to the first provision of compelling every county with thirty thousand people to constitute a judicial district. I am opposed to controlling the Legislature in that mat-

ter. Let them make it so if there be a necessity for it, but do not compel it to be so.

I am also opposed to the provision with respect to the associate judges. I think that those side judges, as they are called, "candle-stick judges" as some gentlemen call them, in derision, are very useful appendages to the court. Nothing in the world would prevent corruption from entering the mind of a president judge, if such a thing were possible in Pennsylvania, so much as to have an honest man on each side of him who must know it if it existed. The object of those men is to keep the court right side up, and on all questions of right they do it, or at least something does it, because certainly the courts in Pennsylvania have, thus far at least, a most excellent reputation for integrity. In addition to this their information upon local affairs is of vast importance to the court.

Now, Mr. President, the gentleman who has just taken his seat (Mr. Harry White) says the districts are overworked. Grant it; let the Legislature apply the remedy, as they must do if we pass this section, in counties having a population over 30,000.

He says also what I hardly conceive to be true even in his own district, that suits in no county of the State can be brought to an issue and tried within a year. It is no uncommon thing for us in my district to bring a suit and have it finally disposed of within three months of the time at which the original writ is issued, and no case, unless both parties are desirous of delay, can hang over more than a year unless under unusual circumstances.

The gentleman says that this would be no increase of expense. Let me tell him when he satisfies us that an increase of judges will not increase the expenses, I desire him to inform us of that fact. I am not inclined to agree with him in that particular. Few persons will.

I trust that this section will be voted down. The article is perfect without it, and if we can afford to leave the whole question to the Legislature as to counties having more than 30,000 inhabitants, we can well afford to leave the whole question to the Legislature as to counties having a less population.

Mr. ALRICKS. I offer the following amendment: Strike out all before the words "may require," in the fourth line, and insert:

"Every county containing a population of not less than fifty-five thousand inhabi-

tants shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants shall constitute a separate judicial district, and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

Mr. President, it is very true, as was said by the gentleman from Columbia, (Mr. Buckalew,) that you cannot measure judicial force by population; but we must have some principle which shall govern the Legislature in the apportionment of judges. Now, I conceive that a population of thirty thousand might not give a judge sufficient work; but if you give him a population of from fifty-five to one hundred thousand, I think it will be found as near the standard as it will be possible for this Convention to come. Where there is a dense population they are generally engaged in commerce, and there they require an additional force. Where there is a sparse population scattered over a large territory, they will not require much judicial force. Therefore this amendment provides that until there is one hundred thousand people in a county there shall be but one judge. As the population increases after that, they are to be entitled to a judge learned in the law for every fifty thousand people. It is very certain that at this time the judicial force in Pennsylvania is not sufficient. I remember very well when I came to the bar in the county in which I have the honor to practice, we could not try a case for six years; but that was the fault of the judge, and not the fault of the mode in which judges were appointed.

I have brought this amendment to the attention of the Convention, and I trust it will meet their approbation. I think if they provide for the appointment of our judges in this manner it will obviate the objection to which this section is now open. The expense, as was very clearly shown by the gentleman from Indiana, (Mr. Harry White,) will not be very much greater than it is at present, and we will have such a force as will dispose of all the business that will be brought up in our courts throughout the Commonwealth.

I do not think there is much importance to be attached to the suggestion that we ought to retain the associate judges. They

answer very well in some cases. They may suit the president judge very well when he wishes to divide the responsibility of his office; but I apprehend we can get along a great deal better when the president judge has to assume the whole responsibility. He will give to his associates the appointment of jurors in railroad cases, and yet he will be very careful that they shall appoint those persons whom he wishes to act in that capacity. I therefore conceive that the office of associate judge is becoming less necessary every day in Pennsylvania, because if we require the president judge to live in a county where there is a population of fifty-five thousand inhabitants, he can very readily become acquainted with the great majority of the business men throughout that territory, and he will have no difficulty in appointing road-viewers and in securing proper bail at the orphans' court where guardians have to give security. I submit this amendment to the Convention, trusting that it will meet their approbation.

Mr. CARTER. Mr. President; I am opposed to the amendment first offered and also to the amendment of the gentleman from Dauphin. I can very well understand how it is proper to put in the Constitution of the State a provision as to the number and kind of courts or judges and the extent of their jurisdiction. Those are principles which lie at the foundation of a proper judiciary system and find their place properly in the Constitution of the State. But when we attempt to measure the amount of judicial service that thirty thousand people or one hundred thousand people may require, we invade the domain of the Legislature. I can scarcely think that the appointment of a separate judge in an agricultural county where there are thirty thousand people, even fifty thousand, where he might be required to sit on the bench and discharge his official functions eight weeks or ten weeks in the year, is likely to make a judge more competent or learned; and if it is true that associate judges may run into error in the appointment of road-viewers or railroad appraisers, and that corruptions which can be mentioned may be referred to that useful and somewhat ornamental branch of the judicial service, as it is insisted by the delegate from Dauphin occurs, it is possible that the same trouble might occur with president judges. Inasmuch as the character of the judges in Pennsylvania has not been assailed in

this Convention, it seems to me that much of their defence and praise is gratuitous.

Judges are just like other men. If you elect a judge for thirty thousand people, and declare in your Constitution that the people shall have that judge and no other judicial service, and if it turns out that he is not a very honest man, or not competent to the discharge of his duties, you fasten a very unpleasant weight indeed upon that thirty thousand people, for the Legislature can grant no relief until they get one hundred thousand people, so as to enlarge the jurisdiction and make two judges. A man who is located in a county alone, who is only in contact with one class of lawyers, with one set of legal ideas, and who discharges his duty in the presence of one class of jurors, is not likely to improve in his profession. The judge is most competent to the discharge of his judicial office who travels into many counties, hears a variety of legal opinions and suggestions and deductions of law logic and discussion from lawyers of different districts, who practice before a different jurisdiction; and he improves by contact with the outer world, and he brings to the discharge of his duties at home new ideas and larger views. He is a bigger man. If you appoint a judge in four or five counties, and if he cannot discharge the duties imposed you may associate him with another judge, and then alternate on the bench in the various counties, and they will improve. If you appoint a judge for thirty thousand people, in a remote county were the people are engaged in various pursuits which do not lead to litigation, he soon becomes like them; he dwarfs with the people around him. Nothing, all lawyers say, dwarfs a bar so much as making small counties. We all have an interest in the enlightenment of the bar; all men feel a satisfaction in knowing that lawyers are learned; that the men who belong to that highly honorable and reputable profession are learned men and not pettifoggers, and the lower you degrade the bar the nearer you come to the pettifogger.

It will be found from experience that in all judicial districts of Pennsylvania where the lawyers are in the habit of traveling from county to county and practising before a judge who travels on a large circuit, or in the presence of judges who come in from other circuits, they are men of larger views, of more learning; they are more ornaments to the profession than those who are dwarfed into

small counties; but if the dwarfing commences with small counties, and the lawyers are belittled, in God's name dwarf and belittle the judge, too, and bring him down to an ordinary alderman or justice of the peace, so that your new system will act in graceful harmony.

If the judge of thirty thousand people should become a bad man where is the remedy, because it is written in your Constitution, and is organic and fundamental law, that the thirty thousand people are to have that judge for ten years? If you incorporate the principle and establish the jurisdiction of your courts and the kind of judges you will have, and allow your Legislature to give judicial service as required, your judicial system is elastic, it meets the wants of the people, it enlarges and makes freer the judge, it enhances the value of the legal profession of the State, and it gives you a principle in your Constitution and leaves to your Legislature the enlargement of that principle, so as to give all the people of the State all the judicial service their wants may require. I will vote against it in every form.

MR. GIBSON. Is an amendment to the amendment in order now, Mr. President? The President *pro tem*. It is.

MR. GIBSON. I move to amend the amendment of the gentleman from Dauphin, (Mr. Alricks,) by inserting after the word "inhabitants," in the first line and in the third line of that amendment, the words "or where two or more adjoining counties contain said number of inhabitants such county or counties," so as to read:

"Every county containing a population of not less than fifty-five thousand inhabitants, or where two or more adjoining counties contain said number, such county or counties shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants, or where two or more adjoining counties contain said number, such county or counties shall constitute a separate judicial district, and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

MR. President, the amendment of the gentleman from Dauphin, it will be perceived, is confined exclusively to individual counties, and it makes separate judi

cial districts of counties containing at least 55,000 inhabitants to be entitled to one law judge, or where they have a population over 100,000, to be entitled to two law judges. Now, in order to test what virtue there may be in this distribution of the judicial power of the State, my amendment proposes to take notice of the smaller counties which may adjoin a larger one and be contiguous to it. For instance—and I cannot take a better illustration than this—there is the county of York, which contains a population of 76,000 inhabitants, and under this amendment would be entitled to one law judge. The county of Adams is contiguous to it, and that contains 30,000 inhabitants. The two together have 106,000, and, according to this amendment, therefore, they ought to be entitled to two law judges. In this manner I think the State could be divided into judicial districts which would fill the wants of the people in this respect. I do not think the amendment of the gentleman from Dauphin is complete without this. We must take some notice of the smaller counties, and they must be joined in some way with the larger ones in order to constitute judicial districts. That also will do away with the objection of the gentleman from Centre (Mr. Curtin.) It will enable one county of a certain number of inhabitants to join one, two or more, so that the judge will have a judicial district in which he will go from county to county, excepting only where the county may be large enough of itself to constitute a separate judicial district.

Mr. ELLIOTT. Mr. President: The section under consideration meets my hearty approval, and I hope it will be adopted without amendment. I believe that every county in this State having a population of thirty thousand is not only entitled to a court with adequate powers for the determination of all cases, civil and criminal, arising within its limits, but for the convenience of the people and the proper dispatch of business should also have within itself all the elements required to constitute such court.

A law judge is as much a part of the necessary machinery of such a county as any officer the people are authorized to elect for their local government. Such a county constitutes a separate community of no inconsiderable moment, with business and social interests to be protected and cared for by the courts, which cannot be done as efficiently in any other man-

ner as by giving to each of these communities a court complete in all its parts.

It is not merely during the terms of court held in a county that a law judge is needed, but his presence is required almost constantly in vacation to order stay of proceedings on writs, grant injunctions and many other things which will at once suggest themselves to every lawyer and business man in this Convention. It is true that we do many of these things before our associate judges not learned in the law in counties where there is no resident law judge, but whether we get them done correctly and in a proper manner or not is a mere matter of chance. There are many things, however, that we cannot get done before our present associate judges, and are compelled in many districts to travel from one hundred to two hundred miles to reach a law judge.

The proposition that it will be for the convenience of the people in counties of thirty thousand population to have a law judge resident therein is so self-evident that I do not believe that any gentleman of this Convention will attempt to controvert it.

What are the objections urged against the adoption of the principle contained in this section? Three reasons have been given by gentlemen who oppose the section, and I desire to examine them for a moment.

It is said that it will increase the expense of maintaining the judiciary of the State. After a careful calculation I am satisfied that it will add but a few judges to the present number.

But if it will serve to dispatch the judicial business of the several counties and will be a great convenience to the people, the argument that it will cost more money than the present system is unworthy the serious consideration of this Convention. Again, it is argued that if we make small districts it will detract from the dignity and importance of the position of judge, and that the result will be that we will have weak and inferior men on the bench. This section will not change the present districts so far as the large counties of the State are concerned, and in the counties having a population of thirty and forty thousand, we will have no difficulty in securing the best legal talent for the bench. The practice of the law is not so remunerative in the small counties of the State that the best lawyers in them will not be entirely willing to resign it for the honors and emoluments of

the bench. And contrary to the expressed opinion of delegates on this floor, the small counties will be able to furnish judges who will compare favorably with those of the large counties and cities of the State. It is also said, with some apparent force, that the counties containing a population not exceeding forty thousand will not furnish sufficient business to keep a judge constantly employed, and therefore we should have larger districts. I grant that in many counties of the population named in the section there would not be sufficient business to occupy a judge every moment of his time in the trial of causes, but I do believe that every industrious and conscientious judge would be employed in the discharge of his duties all of the time he would not need for study and relaxation.

I do not believe that we should require of a judge the last hour of labor that might be extorted from him under the pressure of business accumulating upon his hands in a large district. Suppose, however, that in a county of thirty thousand population a judge would not be required to devote more than four months in a year to the performance of his duties. That affords to my mind no argument against the section. I do not favor the formation of judicial districts with a view of compelling the judges to perform more or less labor, but I desire that they shall be formed in such a way as best to promote the convenience of the people and the dispatch of judicial business. The fact whether the judges will be compelled to work four or eight months in the year has not the weight of a millionth part of a feather with me, and I do not think it ought to with this Convention. It is said that if we do not form such districts as will compel the judges to work constantly they will become lazy and rusty. My judgment is that if we elect lazy lawyers we will have lazy judges, and the fewer duties they are compelled to perform the less harm they will be likely to do, but if we elect our industrious and careful lawyers to be our judges we will have industrious and efficient judges, whether the districts be large or small.

As I said before, I do not favor this section for any other reason than because I believe it will be a great convenience to the people of the smaller counties and will serve to dispatch business coming before the courts. I am not influenced in my course by reason of any inconvenience felt

in my own county, resulting from the present district system. At the last census there was a population in my district of about sixty thousand. We have two law judges, making one for every thirty thousand, as provided by the section under consideration, and both judges reside in my own county. At the very next election, however, M'Kean and Cameron might secure both judges, and we in Tioga would be a hundred and fifty miles by railroad from a law judge. The section secures us against such a contingency. I desire to say, further, that I do not discover in the judges of my own district an illustration of the argument made against small districts, that they will have the tendency to make the judges indolent and inattentive to their duties. The associate law judge although he has been on the bench but a short time, gives promise of making a most efficient and impartial judge, and the president judge, although comparatively a young man, has no superior and very few equals on the bench in Pennsylvania. I trust that this section will meet the same endorsement it received in the committee of the whole. I am fully persuaded that there is no more simple and efficient plan of arranging the judicial district of the State so that justice may be meted out to the people in a convenient and expeditious manner.

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. LILLY. I am opposed to this section as it comes from the committee of the whole. I am opposed to anything of the kind being done, but if this Convention determines to alter the present system and take from the Legislature the power of creating judicial districts when they are necessary, then I am in favor of the amendment of the gentleman from Dauphin, (Mr. Alricks,) because it makes a larger number. I speak from my own standpoint, and I know there is not sufficient work in my own county or in my neighborhood for a judge within anything like the limit of population named by the section. In Carbon county we have about 30,000 people. On the last census we had 28,144. That was three years ago, and probably since then we have increased that 1,800 people. Carbon county is growing very rapidly, but I believe we have not legal business enough in the county to employ a judge six weeks of the whole fifty-two in the year, and it would be preposterous to have a

law judge with nothing to do but to rove around the balance of the year. We have four terms of court in a year, and our courts are very seldom open over one week and sometimes three or four days. Cases that came up in January and March were tried in the court in June. Our cases are close up, and I, for one, do not believe that population is the basis for a judicial district at all. You may take a German population of 100,000, and they probably will not have as much litigation as a population of a different nationality of only 35,000. I believe that the entire subject should be left now, as it has been left before, to the Legislature. When the county of Tioga or any other county in the Commonwealth finds that business is growing so as to require a separate judicial district for its accomodation, let them go to the Legislature and show their dots to the Judiciary Committee and they will be sure to get relief by having the districts made to suit them. It has usually so been before. Applicants of this kind are very seldom turned away, and I know that they will be listened to hereafter.

Taking that view of the case, coming as I do from a district where neither in it nor in the surrounding districts is there sufficient business for a law judge, I see no reason why this section should be passed. I am told by gentlemen that the bar of Northampton and Lehigh, a district that contains one hundred and twenty thousand inhabitants, has so little judicial business that one judge can do all the work and play half the time. Now, you want to give them two judges in these two counties, in fact four under this ratio of thirty thousand inhabitants for a judge, and I do not see the propriety of any such action.

The idea of expense does not affect the case with me at all. I think that the people are entitled to have justice at any cost. But the convenience of the people is a point which has force in my mind, and I believe that the associate judges should be left as they are, and that districts should be formed by the Legislature as heretofore.

Therefore I am opposed, in the first place, to this section; but, as I said before, if this Convention is determined to fix population as the basis of judicial districts, then I am favor of the proposition of the gentleman from Dauphin.

Mr. CORSON. I believe the question is on the immediate motion of the gentle-

man from York, and a motion to amend that amendment will not be in order now. I give notice, for fear that the original amendment of the gentleman from Dauphin be adopted, that I intend to move to strike out "thirty thousand" and insert "seventy-five thousand." But inasmuch as it is not in order to do so now, I defer until a subsequent period what remarks I have to make upon the subject.

Mr. ARMSTRONG. I suppose that the purpose of all governments is to adjust the supervision of government to the practical necessities of the people, and it presents a practical rather than a theoretical question. A wise hatter would make hats for all heads, but he would not make all hats the same size. A wise Legislature will pay regard to the peculiarities of business, its different kinds and different necessities. There is no more reason for fitting all judicial districts in the same mould than there would be in a hatter making all hats on the same block. In this Constitution we are providing a rule which is to be a guide to the Legislature for the entire State, and it does not do therefore to base that rule upon the exigencies of particular and sparsely settled districts.

In the entire northern part of this State, from Warren county to Bradford, embracing about one-half of its entire length, there is not population enough for more than two judges according to the basis contained in this section. If then you take the north-western part of the State, leaving out Erie and Crawford, embracing Warren, M'Kean, Potter, Cameron, Elk, Forrest, Jefferson and Clarion counties, you have nearly one-eighth of the entire area of the State, and yet hardly enough population for two judges. When you come to adjust this thing—thousand population—to the necessities of judicial business, the impossibility of applying any such specific rule becomes apparent. Particular counties vary even more in the character and quantity of business than they do in population. Lycoming county with a population of about fifty thousand, embraces an active and necessarily litigious business that gives constant employment to the judge, and has during his entire term. With a single district we are more than a year behind in our trial lists. Judges of other districts, with far larger population, are by no means fully occupied. Take for illustration, the districts in the south-western part of the State.

Beaver and Washington counties compose the twenty-seventh district, and have a population of eighty-four thousand and over, by this time certainly eighty-five and possibly ninety thousand, and but one judge. The gentleman from Washington (Mr. Lawrence) told me, and he is present to correct me if I do not properly state his language, that with the eighty-five thousand population of that district, there is not business enough to keep one judge busy.

Mr. LAWRENCE. Not half the time.

Mr. ARMSTRONG. Not half the time, the gentleman tells me. So, too, take the district of Greene and Fayette; so, also, the district of Chester and Delaware, with a population of one hundred and sixteen thousand, of which it has been stated, without contradiction, on this floor that the judge is not fully occupied.

I entirely agree with the remarks of gentleman from Tioga, (Mr. Elliott,) that this is a question of the convenience of the people. But it is something beyond a matter of convenience. It is a question of the wants of the people, and of the mode of adjusting their system of litigation upon the best basis according to the forms of law and the actual requirements of their business. It has become almost a maxim that small counties dwarf the profession and small districts dwarf the judge. Let us leave the question just where the discretion will be most wisely vested. By the fourth section of this article of the Constitution we have already provided for a general and sufficient supervision in the Legislature. If judges in the sparse districts are needed to accommodate even a sparse population, let them be given; but do not make the necessities of such sparse population a rule by which a larger number of judges shall be apportioned and fixed upon large districts when there is no necessity for them and when they would be an encumbrance instead of an advantage. But these considerations by no means exhaust the objections. This system would compel the re-districting of the State.

The districts as they now stand have grown out of a century of experience. They have grown with the growth of the State, and the districts have been formed as judicial necessities have demonstrated the propriety or the impropriety of attaching one county to another. But let any gentleman in this Convention undertake a scheme of adjustment which shall cover the entire judicial districts of the State,

and I venture to say that he will fail just as the members of the Judiciary Committee who attempted it failed. I know that I tried three different schemes myself. I know other members of the Committee of the Judiciary who have tried other plans, and in every instance it was an admitted failure. Yet the adoption of this section would impose upon the Legislature a constitutional necessity to adjust and redistrict the entire judicial districts of the State. As to the associate judges, I was at first inclined to believe that it would be wise to abolish them entirely. But under the amendment to the section as it stands at present, giving associate judges only in separate districts, it would abolish them in only some eight or ten districts of the entire State. There are under the existing Constitution but eight counties of the State that constitute separate districts, and of these only Philadelphia and Allegheny are without associate judges not learned in law. All the other districts except eight are composed of from two to four counties. In the sparsely settled districts I readily admit there is a necessity for associate judges. The time has not yet come, perhaps, when as a universal policy we can strike them all out of the judicial system of the State. I do not think that in the thickly settled districts where the judicial business is great—that the associate judges are of very high advantage. In such districts it would be better to abolish them, but if we adopt this section it abolishes them only in a few of the thirty districts of the State. This would seem like an invidious distinction and one which this Convention ought not to put into the Constitution. I think we may with great propriety and advantage leave the whole question to the wise discretion of the Legislature.

But I am admonished that time forbids me to enter into a detailed discussion of this question. I have made these remarks more in the way of suggestion than in the light of a detailed and full discussion of the subject.

Mr. TURRELL. Will the gentleman from Lycoming allow me to make a suggestion to him? I would have the Convention to understand that he refers to the amendment of the gentleman from Dauphin.

Mr. ARMSTRONG. I refer to the section and amendment as it stands in the article under consideration.

Mr. TURRELL. But this language is not in the section.

Mr. ARMSTRONG. The paragraph to which I refer is in these words:

"The office of associate judge not learned in the law is abolished in counties not forming separate judicial districts."

Now, I believe this subject is fully covered by the fourth section of the present article, which wisely vests the necessary discretion in the Legislature. They will understand its bearings better than, in our limited knowledge of facts, we can possibly do. Our inquiry as to any particular district is necessarily collateral. Theirs will be immediate, direct and particular. Let it rest with them, that the Legislature may be untrammelled in giving to districts that require it a judge where it is necessary without imposing a rule which shall compel them to give a judge where it is not necessary.

Mr. BEEBE. Is the gentleman in favor of the section?

Mr. ARMSTRONG. I am not in favor of the section, and I will take this occasion to remark that it was not embodied in the report of the Judiciary Committee. It was passed when, unfortunately for myself, I was not present, or I should have then expressed my views upon it. Doubtless that would not have changed the result, but I should not have troubled the Convention with further discussion of it at this time. It was not recommended by the Judiciary Committee. It was very carefully and very fully considered by them and rejected, and I believe it is wiser to adopt their conclusion and leave this whole question to the discretion of the Legislature without trammeling them with a constitutional limitation which may be very inconvenient and injurious, whilst no sufficient abuse of existing powers, or any well founded apprehension of any such abuse in the future requires us to impose such restriction.

Mr. HARRY WHITE. Mr. President

The PRESIDENT *pro tem*. I believe the delegate has spoken.

Mr. HARRY WHITE. Not on this amendment. I do not desire to make a speech. I merely want to correct a misapprehension. There is a misapprehension prevailing in the minds of some gentlemen, some of whom are not members of the bar, that this provides for an additional judge for every thirty thousand population. One or two gentlemen have talked to me on that subject. Let me remark

that it is only necessary for those gentlemen to read the section as it stands to see that this makes no change in our practice in that respect, except to allow a county of thirty thousand to have at least one judge.

There is no disposition to make a special warfare on the associate judges. On the contrary, the spirit which prompted the election of associate judges originally is recognized and contained in this article. The reason for associate judges originally was to assist in the local management of the affairs of the counties, so that the president judge, living in a neighboring county, riding the circuit, not familiar with the localities, may be informed by the associate judges of some local necessities. Delegates will observe, who do not live in the county districts, that that necessity ceases as soon as you organize a county into a separate district; such county then has one of its citizens resident, living in the county, or a judge who has moved and become resident. He understands the local necessities and is able to relieve them, thus dispensing with the necessity of associate judges.

Then let it be understood under this system there will still be some double districts. I have grouped together some counties which are contiguous and proper to be joined, making fifteen double districts; not less than thirteen will be absolutely necessary under this system, blending together counties not having the necessary population or having counties adding the necessary population to contiguous districts, as provided by the section. There are fifteen districts here. You cannot make less than thirteen. It is recognized there that the associate judges must be maintained to assist in administering the local affairs of the county; consequently it is provided that the associate judges shall be continued in those districts. Therefore the remark which has certainly carelessly fallen from the lips of one of the delegates, the distinguished chairman of the Judiciary Committee, that the associate judges are abolished in every district but eight by this proposition, is inaccurate.

Mr. ARMSTRONG. I did not say that.

Mr. HARRY WHITE. Probably I misapprehended the gentleman; at all events I deemed it proper to make this statement in justice to the proposition.

I will make one other remark while I am on the floor. Every session the Legislature has applications made for the di-

vision of districts. Gentlemen say: "Let the Legislature attend to this matter and remove the difficulty." Why, sir, the Legislature encounters numerous difficulties in this regard; and for many reasons, which I could mention here were it necessary to go into details, the Legislature cannot, at all events thus far has not been able to, do justice to the material necessities of the different districts of this Commonwealth. Why, sir, last year there passed the House of Representatives I think two bills—I believe three bills—providing for additional law judges in three districts of this Commonwealth, one for Montour and Northumberland district. I do not know whether that passed the House or not. It was read in place, and I recollect members of the Judiciary Committee of the Senate were applied to in its behalf. In the district of York and Adams application was made for an additional law judge. Another application was made in the district of Dauphin and Lebanon. From time to time application is made to the Legislature, and in the district of Indiana, Westmoreland and Armstrong, in which I reside, the largest double district in this Commonwealth, in which it is admitted on all hands that there ought to be some addition to the judicial force, although the present, the able young judge there, is bringing up the business. There is no complaint whatever against him nor against any of the associate judges, more than to call attention to the fact that Westmoreland with her sixty thousand population, Armstrong with her forty-five thousand population, and Indiana with her, practically, forty thousand population, have but one law judge, the same that they had years ago. Efforts were made from time to time in the Legislature to divide the district or provide an additional law judge, but for some reasons it cannot be done, because all the conflicting interests could not be rectified.

In view of these practical difficulties, in view of the fact that it makes so little change, in view of the fact that it preserves the harmony of the system, I appeal to gentlemen of the city of Philadelphia, of the county of Allegheny, the great county of Luzerne, and the other large counties which are not affected in this regard, to come to our rescue and assist in the recognition of a fair and just principle in the organic law of the land, so that the Legislature hereafter can do justice in this regard.

Mr. BAER. Mr. President: I am heartily in favor of the section as it is reported. I regret very much that the gentleman from Columbia and the learned chairman of the committee should have expressed themselves as hostile to the adoption of the proposition.

Do gentlemen forget that we have increased ten-fold almost the labors and duties of the common pleas, and when they cite us to the counties of Washington and Beaver, with a population of 85,000, and no work for the judge, do they refer to the present status of the judge or that which shall exist after the adoption of this Constitution? I say that a population of 85,000 souls does create business for the courts in proportion to population, no matter who gainsays it. The more people in any county the more people will die. The more people who die the more business there is for the orphans' court; and the more business for the orphans' court the more auditing; the more auditing the more labor for the judge of the common pleas under section twenty-first of this article, which we have already adopted.

Now, sir, who does not know that the business of the auditing of estates to-day takes up more time than the trial of jury cases; and if the judge of the common pleas is to audit the accounts, as he must by that section, then his duties are multiplied at least four-fold; he has four times as much business to do as he has under the present Constitution when he only sits and tries jury cases. Members of the bar know that many an auditing takes from one to two weeks alone, even in the country districts, even when it involves only the estates of farmers, and the judge of the court who sits as auditor will require just as much time in hearing and determining the questions that come before him as any learned lawyer who acts as auditor for the time being.

Do you say then that the people are to be benefited by confining them to the system that is now in vogue or that which gives us a common pleas judge in every county with a population of 30,000? The people will endorse the proposition of 30,000 because it brings justice near to them; it brings it within speedy reach. They may not be compelled to wait months and years to have a case adjudicated, because the judge is always at hand; there can be no reason for the delay that they are now suffering from.

Now, sir, a county is a community that is entitled to some sort of protection at

the hands of this Constitutional Convention. It is not a mere matter of dollars and cents; it is the interest of the people; and the interest of the people in the interior, where districts are sparsely populated, are just as dear as those of large communities; and we admit that in a large county, having a population of 100,000, one judge will probably be needed to do the business, whereas the county of 30,000 may just need that one judge as much.

You forget also that having passed section twenty-first, by which you make the judge audit these accounts, that if you keep up four counties in a district, with the judge of course residing in but one county, that you make it impossible almost for him to attend to the audits in each of these counties unless you give him no time at all for the preparation of his official duties, and you will take up his time as a menial servant in the examination and auditing of reports and in sitting upon the bench trying causes, so that he will have no time for reading and reflection. I do not believe the doctrine that the circumscribing of the district will necessarily dwarf the judges. The greatest judge this Commonwealth has produced is in this Convention to-day. His duties did not extend beyond the farming community of the interior of Pennsylvania. There was no such thing as commercial law hardly existing in a single court that he presided over, and yet to-day he towers head and shoulders over any other judge or lawyer in this Commonwealth. I do not believe the doctrine that men are produced in any such way. If you elect a man who is ambitious to make a good judge, though he has but a single county, he will qualify himself, he will discharge his duties, he will not be willing to come short of all the powers that are within him.

If you reject this proposition then you entail upon the people of the interior that infamous practice that is now prevalent in some districts, where you place two judges in one district of four counties, making it a double district, and one coming at one term to try cases and at the next term another, and as a consequence a case is hung up for a whole year, because at one term the case is not determined and the judge takes the papers to his chambers in a distant county to determine and render a decision when he comes again, and something may occur that he will be away for an entire year; his colleague holds the court and the case

remains undecided. The people are tired of that sort of administration of justice, and the few paltry dollars more that are required to pay the expenses of a judiciary that shall be able to do their duty and do it well and do it promptly at the times when the people are seeking redress is a greater question than that of mere paltry dollars and cents.

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. FULTON. Mr. President: This seems to be one of the vexed questions of the Convention. I have been looking over the ground and trying to calculate how this arises. It occurred to me a few minutes ago, that for the last month we have been working at another subject in this Convention that partakes of about the same element of dispute: that is, the apportionment of the State for our Legislature. Now, Mr. President, why is it that gentlemen take such an active interest in these questions? It is because there are local interests that come in here and that induce gentlemen to traverse this Hall and work up every interest that can be brought to bear on these subjects, instead of taking a broad view of the whole question and doing that which would be to the interest of the people of this Commonwealth.

Appeals are made here to the delegates from this great city in the east and to the delegates from the great city in the west to come in and rescue a few of the counties that are here making this demand. I ask the gentlemen who represent these great cities to consider what was done with their case a few days ago when they came before this Convention. The Convention said, and I think wisely, "gentlemen, this is a local fight; it is a question upon which you cannot take the view that you should in a Constitutional Convention, and we will come in and settle it for you," and we did come in and settle it, and I am not certain but against the opinion of a majority of the delegates from this city. Now, I appeal to the delegates from the city of Philadelphia and the delegates from the city of Pittsburgh to come forward and take that broad view of this subject that was taken of their question a few days ago by the Convention, and to settle it in such a manner that no local special interests will be looked after, but that they will give us the best and the strongest judiciary that we can possibly have in the State of Pennsylvania.

Gentlemen have spent hours here lauding the judiciary of our Commonwealth, and deservedly too. Why is it then that such an important change should now be made? Why is it that we should revolutionize the whole judiciary of the Commonwealth? Is there not danger that we may make it worse? Does it not at least commend itself to the minds of gentlemen to leave that judiciary where it has rested so long and where it has done so well? Had we not better leave it still with the Legislature? Have they not shown much wisdom in years gone by in preserving for us a good, honest and able judiciary in the State? I think the Convention will act wisely by coming forward without prejudice and voting down this whole section, leaving the subject in the charge of that body that has taken such good care of our judiciary heretofore.

But we are told that this section will furnish a law judge at every man's door and at less expense than the judiciary costs us now. I do not think it is necessary to go into a close calculation to demonstrate that more judges will cost less money. I think my colleague, the gentleman from Indiana, (Mr. Harry White,) did not intend to make that statement to this Convention. I had not the time nor did I have the figures to go over his calculations, but I can tell you that in this city ten judges receive \$1,000 each more than he put in his calculation; in the city of Pittsburg five judges receive \$1,000 each more; and in the county of Dauphin one judge receives \$1,000 more. There are \$16,000 that are lost in the calculation of the gentleman from Indiana; and I have no doubt if any gentleman has curiosity enough to look over the figures he will soon discover the balance and find that his account will swell far above, as it must do, the present expense of our judiciary. I hope the Convention will not allow themselves to be carried away by such calculations as that.

But, sir, I do not wish to take up the time of the Convention, and I will not make any further remarks.

MR. PUGHE. Mr. President: I did not intend to say anything on this question, for the reason that I do not consider myself competent to do so. The large majority of this Convention are gentlemen belonging to that honorable profession, the legal profession. I only wish to give you in a few words the views of an outsider on this question.

At first I was impressed with the belief that the section was right as it stands; but after listening to the debate with a good deal of attention it has changed my views. I do not believe that population is the correct basis for establishing judicial districts; and I will take the fact as stated by the chairman of the Judiciary Committee and assented to by the gentleman from Washington (Mr. Lawrence.) There is in his district, consisting of Washington and Beaver, a population of eighty-five thousand. They would be entitled at any rate to two judges and more under this section; and he stated that there is not work enough there to-day for one judge.

Now, I will give you a few statistics of my own county, Luzerne. We have two judges of the common pleas, independent of the mayor's courts. I ask the legal gentlemen here to pay attention to the figures I shall give, and then compare the labor of those two judges in that county with the labor of judges in the agricultural counties of the State, where they have a population of 30,000 or 40,000, and if they had 100,000 they would be entitled of course to the same ratio of judges. I will give you the business of the Luzerne county court for the year 1872, taken from the record by myself during the last week. In the court of common pleas in the January term there were 917 cases; February term, 995; April term, 930; October term, 3,221; November term, 438, making 6,501. The list of cases argued before the argument court in March, June, October and December amounted to 682. The cases brought before the orphans' court in the March, June and October terms amounted to 55, and December was passed over. There were also brought before the court equity cases to the number of 40. In the quarter sessions there were in the January term, 1872, 91 cases; oyer and terminer, 1; in the April term, 146 cases; oyer and terminer, 2; in the September term, 291 cases; oyer and terminer, 6; in the November term, 131 cases, oyer and terminer, 1, making 10 cases in the oyer and terminer, and the whole footing up 669.

Now, let me give you a recapitulation of the whole. In the common pleas, 6,501 cases; in the argument court, 682; in the quarter sessions, including the oyer and terminer, 669; in the orphans' court, 55; equity cases 40; total, 7,947 cases.

This is the work that two judges have to do in the county of Luzerne. If you take population as a basis we, having

160,000, ought to have at least about seven judges in that county. But in your agricultural counties, where the people are not litigious, they have but very few cases. I had before me some statistics forwarded by the prothonotaries to the chairman of the Judiciary Committee, and I was astonished at the small amount of business done in some of the counties that would have a judge under this section. I think it would be a great injustice to the rest of the State, for these judges who have to labor and work hard get no more pay than those judges who would be sitting on the bench for about three weeks or a month in the year and go fishing the rest.

This, sir, is my view as a plain business man on this subject.

Mr. S. A. PURVIANCE. Mr. President: Having taken some part in the drawing of this section, and finding that it is misapprehended, I wish to engage the attention of the Convention for a very few moments while I state its purport and effect.

The gentleman from Luzerne who has just taken his seat, (Mr. Pughe,) as I think I shall be able to satisfy him, entirely misapprehends the tenor of the section. The section is drawn for the purpose of graduating itself as well to the agricultural counties as to the mining and manufacturing counties. For instance, take the district of Beaver and Washington, which has been alluded to. It is entitled to one judge, having a population of 30,000. Under this section it may have another if it desires it, or if the business of the district requires it, it is entitled to another; but that depends upon the movement of the people of that district. So there is a misapprehension with regard to the smaller districts as referred to by the chairman of the Committee on the Judiciary as to the northern section of the State. The provisions there is in these words:

"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."

Now, sir, the working of that is this: Two or three counties in the northern part of the State having a population less than 30,000 may be attached together. The Legislature may take into view the question of territory; they may take into view the inconvenience referred to by the gentleman from Tioga, (Mr. Elliott,) and if traveling is to be taken into the account,

although two or three counties may fall below 30,000, they will have the power of forming them into a judicial district. So that you see, sir, this section, if passed, graduates itself to every county in the Commonwealth, be it large or be it small.

A word or two in reference to the further workings of this section. Take, for instance, the county of Clearfield, to which I referred before in my remarks on this section. The county of Clearfield, I am told, has one hundred and thirty-six ejectments now at issue and ready to be tried. Does not that county need a separate judge? And because the county of Clinton and the county of Centre, with which it is connected, might not have work enough for a separate judge for each it is no reason why Clearfield should suffer.

Mr. ARMSTRONG. If the gentleman will allow me, he refers to the district of which Judge Mayer is the very efficient judge. Judge Mayer recently told me that if the cases were ready he could do all the business of that whole district and do it easily.

Mr. S. A. PURVIANCE. Well, sir, in a recent conversation with Judge Mayer on the subject, he desired that there should be an assistant law judge for that district, and suggested to me the propriety of making it imperative on the Legislature in a district having seventy thousand of a population (which will just about cover his) that there should be an additional law judge, and related to me the fact of one hundred and thirty-six ejectments at issue now in the county of Clearfield.

Mr. ARMSTRONG. Will the gentleman allow me further to explain?

Mr. PURVIANCE. Certainly.

Mr. ARMSTRONG. Judge Mayer, when the first project was suggested giving an additional law judge to that county, stated distinctly that it was wholly unnecessary, and he did not desire it. He is, however, in extremely ill-health; has recently been suffering under severe indisposition in the hands of a physician, and since that he has thought it would be a relief, but not to an able-bodied judge.

Mr. S. A. PURVIANCE. Well, Mr. President, let me say that any lawyer in this body who is familiar with actions of ejectment will at once concede the fact that any county having within it one hundred and thirty-six ejectments at issue ready for trial needs a law judge from one end of the year to the other; and because adjoining counties may not

need it, it does not follow, therefore, that injustice must be done to the county of Clearfield.

But, sir, the burden of this argument seems to be founded upon the present day and generation. We are not making a Constitution simply for the present day. Counties that now have barely the requisite thirty thousand, ten, fifteen or twenty, thirty or forty years hence will far outswell that number, and be entitled to their additional judge, and therefore we should as a Convention not regard the present as our standard, but should look to the future when about to establish a permanent organic law. It must be apparent to all that the population of the different counties to which allusion has been made is constantly increasing, and destined in time to duplicate and in some instances to quadruple. The gentleman from Carbon over and over again refers to his county, that has but twenty-eight thousand population. Why, sir, that county is swelling rapidly. That county may be a county of sixty thousand population before twenty years roll by.

Now, sir, I have but one word more to say. This feature was passed by the committee of the whole, after due and full consideration, in the absence of the chairman of the Judiciary Committee, but it was well considered. It was well and fully discussed, more so than it has been now, and it does seem to me that no better system can be devised than the one in this section.

Mr. CLARK. Mr. President: I will detain the Convention for a few moments only, having on a previous occasion addressed the committee of the whole on the same subject more at length.

The section under consideration is properly divisible into four distinct and separate propositions:

First. Each county containing 30,000 inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law.

Second. The Legislature shall provide for additional judges as the business of the said districts may require.

Third. 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; and

Fourth. The office of associate judge not learned in the law is abolished, excepting in counties not forming separate dis-

tricts, reserving to the present incumbents their terms, &c.

I agree that population is not the proper basis for judicial apportionment. The business of a district depends much upon the character of the employment of its population. An agricultural community has less litigation than a mining or manufacturing or commercial community, and hence population alone would be an improper basis upon which to establish a complete, inflexible, constitutional apportionment. But, sir, I am of opinion that for a starting point some number of inhabitants might be assumed, upon the basis of the business likely to arise in an agricultural community, which would fairly entitle a county to one judge. This section assumes the number 30,000; if that be too small, make it larger, say 40,000 or 50,000. I prefer a larger number, believing the number in the section to be too small. Some number of people, I say, upon such a plan, might safely be taken as a basis for the employment of one judge. This estimate should be made to cover the amount of litigation in a county engaged in agriculture, as such pursuits are least inclined to originate business for the courts. The number being taken we have a starting point for a system which is self-adjusting, flexible and enduring. It will be a system which will do away with gerrymandering in the Legislature. It makes its own apportionment. Political knaves can have nothing to do with setting up judicial districts for their friends. Whenever a county arrives at the requisite standard of population it will be entitled to a judge.

By the twenty-first section of this article we have imposed new duties upon our judges of the common pleas. We will require them to audit all accounts filed in the register's office and in the orphans' court, and make distribution of the assets of such estates. This is a labor of great magnitude, and the extent of this character of labor depends in large measure upon population. Where many people live of course many must die, and hence the business of the orphans' court and the auditing and distribution of decedents' estates will be controlled by population. In this respect, therefore, population is a proper subject of consideration in a judicial apportionment. The abolition of the associate judges seems to be the unanimous sentiment of this body. Now, it must be conceded that a judge resident in every county is an indispensable requisite.

If the associate judges are dispensed with, are we not driven to the expedient provided by this section in order to effectuate that object? If large districts are made, and judges are chosen on the limited vote, as the opponents of this system desire, what assurance have we that every county will have a judge resident within its limits? Two or more of them may be chosen from the same county, depending, to a great extent, upon the population, political majorities or local feeling of the several counties composing the district, or the personal popularity of the candidates.

Beside all this there is and will be an especial advantage to the profession to have a judge within the county in which the subject matter of litigation is. Cases may be examined, discussed and determined in vacation as easily and as well as in term time. The judge can be seen at chamber at pleasure, and upon stipulated notice to an adversary party, a hearing is at all times practicable. Thus matters of great importance, matters involving haste or demanding immediate attention, as well as cases involving great conflict of testimony, or confusion or complication of fact, can at leisure, and without interruption, be quietly and carefully considered. Arguments of bills in equity or of reports of masters, auditors' reports, questions of distribution, motions for injunctions, *mandamus* or *quo warranto*, &c., &c., can all be determined away from the bustle and turmoil of a court term. Those members of the Convention who reside or practice in counties having a resident president judge can not fully appreciate the great inconveniences arising out of the absence of such a judge. And we submit that they should not dismiss this section without the gravest consideration of its merits and of the great advantage likely to result from its adoption to those who do not enjoy the same benefits which they now enjoy. This system brings justice home to every man's door. Terms of court can be arranged to suit the bar. Courts can be held whenever desired; such seasons can be selected as best suits the community in which the courts are to be held. In agricultural counties seed time and harvest will be devoted to the prosecution of the farmers' work, and no call to serve as a witness or juror will embarrass the farmers' work. In the lumber regions of the State the season of "the early and the latter rain" will be devoted to rafting, and the pursuits of those so engaged.

Thus the local interests of each community can be accommodated, and our courts will interfere with none of the material interests of the people.

Those who have discussed the section in opposition to it seem to misapprehend the character of its provisions. The gentleman from Luzerne, (Mr. Pughe) in his discussion of it, seemed to suppose that the section provided for a judge to each thirty thousand of population. This is incorrect. The first part of the section simply fixes the population which will entitle a county to one judge, and the second branch provides that the Legislature shall provide for as many other judges as the business of the district shall make necessary. Population only applies so far as to fix the standard for the first judge; after that the Legislature will and must provide.

The third proposition, contained in the section, provides for the apportionment of the smaller counties and the establishment of single districts, or if necessity requires, for the annexing of such smaller counties to contiguous districts.

Thus the system will be one consistent throughout; a single district system as distinguished from districts having two or more judges. I need not again refer to the disadvantages, delays and annoyances necessarily connected with such double or triple districts. I spoke somewhat upon that subject on a previous occasion. There can be no shifting of responsibility, no shirking of duty, no dividing up of the management of causes. One judge will do the entire business of his district, and, feeling his responsibility, will enter more earnestly and energetically upon his work.

The fourth proposition provides for the abolition of the associate judges. Upon this subject I need say nothing, as the unanimous sentiment and expression of the Convention seems to favor it.

In order, however, to provide a judge in each county, the associate judges are retained in such small counties as are formed into districts of more than one county.

I think the provisions of this section are wise and proper, and I hope the Convention will approve of them; and I am confident that the future will prove the wisdom of our work.

The PRESIDENT *pro tem.* The hour of six having arrived the Convention stands adjourned until to-morrow morning at nine o'clock.

ONE HUNDRED AND THIRTY-SIXTH DAY.

WEDNESDAY, July 9, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

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

INVITATION TO ERIE.

The President *pro tem.* A communication has been received, which will be read :

The CLERK read as follows :

CITY OF ERIE, MAYOR'S OFFICE, }
July 7, 1873. }

Hon. JOHN H. WALKER,
President of the Constitutional Convention
of Pennsylvania:

SIR:—At a meeting of the city councils a resolution was unanimously adopted instructing me to invite the Convention to hold an adjourned session in this city.

I take pleasure in communicating the resolution to the Convention. Our citizens would esteem it a high honor to have the Convention meet in our city, and I hope it may accord with the views of the members to accept the invitation.

Very truly, your obedient servant,

CHAS. M. REED,

Mayor.

Mr. DARLINGTON. I move that the thanks of the Convention be returned for the invitation, and that the communication lie on the table.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. GILPIN asked and obtained leave of absence for Mr. Mott for a few days from to-day on account of sickness.

THE JUDICIAL SYSTEM.

The Convention resumed on second reading the consideration of the article on the judiciary reported from the committee of the whole.

The President *pro tem.* The twenty-fourth section is before the Convention. The pending question is on the amendment of the delegate from York (Mr. Gibson) to the amendment of the delegate from Dauphin (Mr. Alricks.) The amend-

ment and the amendment to the amendment will be read.

The CLERK. Mr. Alricks proposed to amend, by striking out the first, second and third lines to and including the word "districts," in the fourth line, and inserting as follows :

"Every county containing a population of not less than fifty-five thousand inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants shall constitute a separate judicial district, and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

The amendment to the amendment is to insert after the word "inhabitants," in the first line, the words, "or where two or more adjoining counties contain said number of inhabitants such county or counties," and also to insert after the word "inhabitants," in the third line, the words, "or where two or more adjoining counties contain said number of inhabitants such county or counties."

Mr. SHARPE. Mr. President: The fourth section of the article on the judiciary provides that until otherwise directed by law the courts of common pleas shall continue as at present organized, except so far as they may be changed by the article itself. It also commits to the Legislature the whole business of the creation and arrangement of the judicial districts. This is part of the scheme that was adopted and reported by the Committee on the Judiciary; but after that report came in the section now under consideration was interpolated.

It is observable that this section takes a wide departure from the report of the Committee on the Judiciary. Its fundamental proposition is that every county containing a population of 30,000 shall be a separate judicial district, and entitled to one judge learned in the law. If this section passes, or if any section contain-

ing the same principle shall prevail, it is quite manifest that the discretion and action of the Legislature in arranging and framing of judicial districts will have received a very serious check.

Now, sir, the question is a very narrow one: Shall we leave this whole matter to the calm and deliberate action of the Legislature, or shall we strive to incorporate into the organic law of the Commonwealth a firm, hard and inflexible basis for the apportionment of the State into judicial districts, which time cannot vary, nor the necessities or the wishes of the people change? For myself, I greatly prefer to leave this whole matter to the Legislature. This power has been committed in all time past to the Legislature, and it has never been wantonly abused, so far as I am aware. Legislators, it is true, have bartered away legislation for filthy lucre in times past, and it is quite likely they will do so in times to come; but, nevertheless, there is a sanctity about the high priests of justice that has awed them into reverence. There is a purity about the judicial ermine that has constrained them to keep their polluted hands off the judges.

Now, sir, if we look around us we shall see that the changing population of counties, the increase and decrease of business, the increase and diminution of litigation, the characteristics and habits of the people, all admonish us that it is not safe and proper for the Convention to prescribe an unbending basis for judicial apportionment. These are the considerations that do influence legislative action, and ought to influence legislative action in the judicial apportionment of the State.

Now, sir, this proposition that is before the Convention contemplates that we shall undertake to district the State in this Convention. It contemplates that we shall establish a basis which shall not be changed and cannot be changed by any legislative action. What is the excuse; what is the reason that is alleged for the adoption of this section? It is said that justice ought to be speedily administered. In the language of one of the advocates of this section, it is said that justice ought to be brought home to the very doors of the people. Whilst it is true that justice ought to be speedily administered, and as conveniently for the suitors as practicable, it is nevertheless true that the farther and the higher you keep the judges above the suitors the purer will be the fountain of

justice. I assert, sir, here in this august presence, that one of the greatest obstructions to the proper performance by the judge of his judicial functions is in many cases his too intimate knowledge of the parties and their witnesses. He hears so much of the case out of court that it is with the extreme difficulty that he can hold the balances of justice even.

The proposition before this Convention looks to a reduction in the size of the judicial districts. It proposes to bring the judge and the suitors who are to appear before him into closer contact and more intimate relations, to give him a better opportunity and greater facilities for knowing the parties and their witnesses, to hear all about the cause, to have his sympathies enlisted or his prejudices excited, before he takes his seat upon the bench; and this, sir, is called reform! Nay, more, this is said to be bringing justice home to the doors of the suitors; nay, more, it is said that the proper administration of justice requires this innovation.

Why, sir, it has been well said in this debate already that population can never be the true measure of judicial service. Agriculture gives rise to but few contracts, and where there are but few contracts there are but few law-suits, for contracts are the pulsations of litigation. The tillers of the soil are independent, peaceable, and non-litigious. They seldom enter the temple of justice to invoke its ministrations. In the Sixteenth judicial district, composed of the counties of Somerset, Bedford, Fulton and Franklin, with a population of over 100,000, chiefly engaged in agricultural pursuits, there are two law judges. I think I give a liberal account when I say that the period of the sessions of the courts in those four counties annually does not exceed thirty weeks, or fifteen weeks to each judge. That district is fortunate in having two young and able judges, either of whom, with perfect ease and to the satisfaction of the people, could dispose of all the business in the district.

What does this proposition contemplate? It contemplates to give to a population of thirty thousand a judicial district, and proposes that that population shall engross the entire judicial labors of a judge learned in the law. In an agricultural district of thirty thousand people the judge will have so little to do that the rust will gather upon his armor and the bow of his strength will fail. If we

desire to have a good judiciary, if we desire to have one that will adorn the Commonwealth, if we desire to add additional lustre to the halo of splendor that has settled down upon the past and present judiciary of the Commonwealth, this section ought to be voted down. Select the best men, give them plenty of work to do, and pay them liberally, are the essential requisites in the framing of any scheme for the judicial department of the government.

Oh, sir, it is a thousand times better to wear out than to rust out, and no judge with physical strength and with mental vigor fitted for the station can object to being employed two-thirds of the year in active duties in the court. If this proposition contained in the section, or any similar proposition, passes this Convention it will inevitably lead to a deterioration of the judges. That is one of the greatest objections that can be urged to the section. We must have good judges. With less than good judges the people will not be content, and therefore I shall vote against any proposition which contemplates as the basis of judicial apportionment population alone.

Mr. KAINE. I am opposed to the amendment to the amendment as well as to the amendment itself, and in favor of the section as it is before the House. I am, perhaps, more fortunate than other gentlemen upon this floor, for I have not the special claims of any judge to represent here. Gentlemen like the one who has just addressed the Convention, who has a president judge residing in his town, are opposed to this proposition. The gentleman from Franklin lives near one end of a judicial district that is nearly one hundred miles long, while Somerset county is at the other end of the district and fifty miles from the president judge. He lives in what is known as a double district, one of those districts having a president judge and an associate law judge, a thing that I desire to see blotted out from the Commonwealth of Pennsylvania.

Mr. SHARPE. If the gentleman from Fayette will allow me to interrupt him, I beg to say to him that the president judge lives in Bedford county.

Mr. KAINE. I know he does; but how far is that from Somerset county? I believe it is nearly fifty miles, and if a citizen in Somerset county desires anything done that can only be done by a president judge, he has to send a boy on horse-

back fifty miles to bring the president judge to Somerset.

Mr. STEWART. He can go by rail now.

Mr. KAINE. I desire to abolish that kind of districts. I want the law judges of the Commonwealth to stand on the same platform. We have heard from the delegate from Somerset (Mr. Baer) upon this subject. He knows how this kind of thing works. In the gentleman's (Mr. Sharpe's) they have a law judge in Franklin county, in the town in which he lives. They have another one in Bedford. Those two judges desire to stay at home, as I understand, and hold courts in their own respective counties, and there is a continual quarrel between them as to who shall go to Somerset. Now 30,000 people in the county of Somerset, and more, are just as well entitled to the presence of a president judge as the people in Franklin or the people in Bedford.

Mr. SHARPE. Will the gentleman allow me to interrupt him? They had a president judge for thirty years in Somerset.

Mr. KAINE. That was in the last century. [Laughter.]

Mr. SHARPE. No, sir.

Mr. KAINE. I have read when Somerset county belonged to the judicial district in which I reside; and then the grandfather of the distinguished gentleman who represents in part Allegheny county upon this floor (Mr. Patterson) presided there.

Mr. STEWART. Will the gentleman allow me to correct him in one respect? He has referred to the relations between the two judges in the district. He has said that there has been a constant quarrel between them as to who shall hold court in Somerset. I think, perhaps, I can speak more correctly in regard to that than the gentleman who lives in a foreign district. The relations between the two judges are of the most amicable character, and I have never yet heard that there was any disagreement at all between them as to who was to hold court here or there; nor did I ever understand that either was desirous of holding court in his own county. I think my opportunities of knowing are better than those of the gentleman.

Mr. KAINE. That may be; but I want the gentleman from Franklin to know that I live nearer Somerset than he does, that I live nearer the Somerset county line, that our means of access to Somerset county are ten times better than his; and in what I have said upon that sub-

ject, of course, I have only spoken from report. I have heard a good deal upon that subject from members of the bar of Somerset county, and from the people; whether it be true or not I do not intend to say. I give it for what it is worth and as I have heard it.

The distinguished gentleman from Lycoming, the chairman of the Judiciary Committee, referred yesterday, in some remarks he made, to my district as not needing anything of this kind. I might say to him, as the gentleman from Franklin has just now said to me, that perhaps my opportunities in regard to that district are better than those of the gentleman from Lycoming. There are cases on the dockets of Fayette county standing at issue for ten years, and I looked this morning in the Journal to see the report of the prothonotary of Fayette county as to how many cases there were untried, but I have not been able to lay my hand on it. I think, however, from recollection, that there are some one thousand three hundred cases.

But, Mr. President, you must remember, and I hope the members of this Convention will remember, that we have passed a provision in this article that puts larger duties upon the president judge of the district: "All accounts filed in the register's office and such separate orphans' court shall be audited by the court without expense to the parties." I hold that that provision makes it incumbent upon the president judge of every court to examine and if necessary audit every account that may be filed in the orphans' court or register's office. That would be a very considerable increase to his duty. Where a county has thirty thousand population it is entitled to a judge. It may have fifty thousand or sixty thousand or seventy thousand and only be entitled to one judge. That is left to the Legislature hereafter.

The gentleman from Lycoming (Mr. Armstrong) also referred to the district composed of the counties of Washington and Beaver, on the authority of the distinguished gentleman from Washington (Mr. Lawrence.) The gentleman from Washington no doubt knows all about the legal business of his county, although he may not be a member of the profession, and although he does live within a distance of twenty miles from the county seat; but I profess to know something about the county of Beaver, and I know that the business in Beaver county is not

up as it is in other counties in this State. They have a very able judge in the counties of Washington and Beaver, one of the ablest in the State. Whether it has been from overwork or not in his district I do not know, but I do know that he is in very bad health, not able now to attend to any business whatever. Washington county is a large county, and there is ample business in that county for a single judge. The same is true of the county of Beaver. I desire that the people shall have justice brought home to them that it may be convenient to them. Why should the people of Beaver county be required to travel forty or fifty miles to go; the aid of a president judge when required? They can travel by rail now fifty or sixty miles from Beaver to Washington. It answers very well for the gentlemen who have such judges living in their immediate counties, but in counties where there is no president judge it does not operate so well.

A number of gentlemen who have spoken on this subject, as well as the gentleman from Franklin who last addressed the Convention, have referred to the people wanting nothing of this kind, and they say they have heard no complaint. Sir, if there is any one thing more than another upon which I have heard complaint it is on the subject of the judiciary. What they wanted was more working force; the business was behind not only in the several districts of the courts of common pleas, but in the Supreme Court. At the time of the meeting of this Convention and for months afterwards our ears were filled with declamation on the subject of the necessity of more force in the judiciary of the Commonwealth. The plan proposed by this section is not what I would desire, but it is better than the present system, and therefore I shall support it. It will give us that which, in my opinion, has been much desired, and which I know is needed in the Commonwealth of Pennsylvania, more judicial force. It is a practical question. It is not a speculative one at all.

But it is said if you make the districts small, you will belittle the judges; you will have little judges. We do not expect to have giants for judges in these days; we do not expect men to come among us here for judges who shall be like Saul among the people, a head and shoulders taller than anybody else; but we expect to get men to do the business of the community well and faithfully

and according to the Constitution and laws of the Commonwealth; and if they do this, it is all we ask and all we desire. I hope therefore that the Convention will adopt this provision.

I was very much surprised to find the gentleman from Westmoreland (Mr. Fulton) opposing this provision—Westmoreland county that has been wanting to be separated from the other two counties for fifteen or twenty years. I know that for more than ten years at least they have been trying to have Westmoreland county established by the Legislature as a separate judicial district, but they have always failed. They attempted it when I was in the Legislature in 1862 and 1863, and they have attempted it since that time to my own knowledge: and yet the gentleman wants Westmoreland county to remain as it is in a district composed of Westmoreland, Indiana and Armstrong, each county containing more than 30,000, more than 40,000. I believe Westmoreland has more than 60,000 inhabitants, and yet she is not entitled to a single judge. No county in the State desires to be separated into a judicial district more than Westmoreland—

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. PURMAN. I think the amendment and the section under consideration are both pernicious, and, therefore, neither ought to pass. In the first place, population is not the true basis on which to rest judicial force, and in a great manufacturing, mining and commercial State like Pennsylvania we ought not to fix in the Constitution a rule by which judicial force is to be measured. If we leave it to the Legislature then it is flexible, and it can be accommodated to the wants and interests of the people throughout the whole State. When I say this I am quite aware that now and then the Legislature has failed to meet the proper expectations of the people in this regard, as in many others, by reason of political and other considerations; but the people always have the power in their own hands. If they say to their public servants, the Legislature, "in questions of this kind no party shall rule you, and we will refuse to return you to your seats unless you make such arrangements as will suit the convenience, interests and wants of the people," the Legislature would always accommodate them in their judicial districts and in providing the necessary judicial force for the administration of justice.

This proposition is pernicious because, as has been well said, it will create a large number of judges without sufficient labor to keep them actively employed during the year, and therefore it will dwarf the judiciary. It is hardly necessary for me to say to the lawyers of this Convention that if they want an efficient and active judge, they want him working pretty much the whole year; they want to keep his brain active. We all know that except in counties where they are extremely manufacturing or mining and full of litigation, a judge in a county of thirty thousand would not be employed more than about ten weeks in the year. That would leave him idle so much of his time that he would become almost inefficient.

The district in which I reside has been referred to by the gentleman from Fayette, (Mr. Kaine,) the gentleman from Lyscoming, (Mr. Armstrong,) and others. Now, by the provisions of law in our county we have three terms of two weeks each, and one term of one week, making seven weeks. In the county of Fayette, the county of my distinguished friend, (Mr. Kaine,) they have the same provision. That makes fourteen weeks that the judge in the Fourteenth judicial district would be employed. Then there may be adjourned courts, though not very often. We occasionally have an adjourned court, say one a year.

MR. KAINE. I ask the gentleman from Greene if he does not know that for the last four years we have had four or five and sometime six weeks of adjourned court every year in our county?

MR. PURMAN. I know they have some adjourned courts in Fayette county. The precise number of weeks and days employed I do not know. But suppose they had during the last four years five weeks of adjourned court in Fayette county; that would make nineteen weeks. We never had over one week of adjourned court in Greene county, and that would make twenty weeks. Now, I undertake to say that an active-minded and able-bodied judge can work forty weeks in the year, and that will leave him three months for general reading and recreation. Such active employment and mental industry would keep the judge fresh in all his duties, close to his books, accurate in his decisions, and faithful in every duty and fully appreciated by the people and the bar.

Something has been said about the state of the unfinished business of the county of Fayette and the county of Greene based upon the report of the prothonotary. I speak with some knowledge on this subject. I say a large number of the causes reported here as at issue, when they were originally brought were never intended to be tried; it is not now intended that they shall be tried, and they never will be tried if you had courts open every day in the year; and I speak from my experience as a lawyer that as to the large list of causes certified here from every county in the Commonwealth as at issue and untied the same is true of a large percentage of them. They are brought for various purposes, but never intended to be tried. I say if you were to employ a judge forty weeks in the Fourteenth judicial district for two years there would not remain a single cause there over a year untied; they would all be wiped out by such a course in the period above stated.

Yesterday my distinguished friend from Indiana (Mr. Harry White) appealed to the delegates from Philadelphia and Pittsburg not to oppose this section. I wish the gentleman had been susceptible to appeals a few years ago when I called upon him so tenderly to give us a judicial district out of Westmoreland county, but his love for the old judicial system, his love for the old Tenth judicial district, composed of Westmoreland, Indiana and Armstrong, was so strong that he refused us the boon of an independent district out of Westmoreland county; and certainly by his votes and his influence in the Senate he prevented the making of a district out of Westmoreland county on the ground, as the gentleman said then, of his love and attachment for the old system and the old district.

MR. HARRY WHITE. The delegate will allow me to explain. Everything that the honorable gentleman states is correct, but then I was representing my political constituents. [Laughter.]

MR. PURMAN. That is just what I thought. I observed a while ago that his political constituents ought to take him out for having refused to do justice to the people in the administration of justice, and if he persisted longer in it I have no doubt they would.

I think, Mr. President and gentlemen of the Convention, that upon every consideration we ought not to pass this sec-

tion and these amendments, leaving the matter to the Legislature.

It has been said that we ought to give a judge to each county, because in the twenty-first section we have provided that in the orphans' court all accounts shall be audited by the court without expense to parties. But this will not increase the labors of the judge, as the clerk, being a salaried officer, will be the auditor to ascertain the facts and report, and the judge will then pass upon the facts and conclusion as reported by the clerk. There is, therefore, no force in this argument, and it is no reason why the section should be adopted.

There is another objection to the section, to my mind well founded. If this section is adopted it will abolish the associate judges—the judges unlearned in the law—and this I am opposed to on principles of sound public policy. The associate judges directly represent the people in the court, and popularize the court, or give public confidence in the court. The people can look to them and feel that they can never lose their lives, their liberty or their property without the consent of men directly from themselves and of themselves.

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. MANN. Mr. President: I am in favor of the principle of this section, because I believe it is the only way that a growing evil in connection with the judiciary can be remedied. I do not say that I am in favor of this number of thirty thousand. That is a matter that can be easily arranged in this Convention. If that is too small a number, make it larger. But I maintain that the principle upon which this section is framed is the only one that will remedy the growing evil of forming double judicial districts throughout the Commonwealth and of forming them very unequally. I desire to point out a few of the glaring inequalities under the present system which gentlemen seem so anxious to adhere to.

I will take, for instance, the county of Lycoming, from which the able chairman of this committee (Mr. Armstrong) comes. There was in that county, by the last census, forty-seven thousand inhabitants. It is a single judicial district, and was made so by the persistent and determined efforts of the members of the bar of that county three or four years ago, they alleging that there was sufficient business in that county for one judge, and they

convinced the Legislature of that fact and secured for Lycoming county, with forty-seven thousand inhabitants, the formation of a single district.

Now, sir, if that is a proper measure of population for Lycoming county, I ask if it is not a proper measure for all the counties in the Commonwealth? Why not? Why should Lycoming county be thus favored; for, gentlemen, Lycoming county will never be connected with other counties again in all time to come. Having secured that position she will maintain it, and nobody will ever think of depriving her of the privilege which she has obtained, but she will remain from this time on a single judicial district; and for one I do not envy her her privileges. All I ask is that other counties in the Commonwealth shall have like privileges, and I maintain that it is only by the adoption of this section that equality and fair dealing can be obtained throughout the State.

I will take my own district as another glaring illustration of inequality. There are four counties in that district, with a population of about 60,000. A few years ago the president judge, an honored and respected man, one of the ablest judges in the State, was afflicted with some bodily infirmity that made it difficult for him to transact the business of the district, and the Legislature gave us another judge, so that we have now two judges, with a population of 60,000, both of them able bodied men, and that district will remain with two judges. They have their commissions, and nobody will think of interfering with them; and that district will continue with two judges. That is what grows up under the present system. It is the legitimate working out of the system. It is not an accidental thing, for it is going on all over the State. Whenever there comes a strong application to the Legislature for a particular district where, from some infirmity of the judge or for any other reason, there is a then present necessity, there will be relief furnished in just that way, while other districts which are not so pressing will remain without this great convenience of a judge at home.

Now, it is utterly impossible to argue with any justice that the system proposed by this section will work greater inequalities than the present system. I maintain that it will tend to equalize the benefits and blessings of prompt justice throughout the Commonwealth. Gentle-

men, I ask you just to run your minds over the objection made to this section. It has been opposed in this Convention by the very ablest men the floor. The gentleman from Columbia, (Mr. Buckalew,) who is generally so favorable to beneficent reforms, for some unaccountable reason opposes this section, one of the most beneficent in the whole article. I maintain that this twenty-fourth section has more good in it than the entire article combined without it. It will work out for the people more beneficent results than all the rest of the article, and yet for some reason the gentleman from Columbia feels constrained to oppose it. But listen to his arguments, and what are they? Are they such arguments as should convince any man unprejudiced in his judgment that he should vote against the section? It seems to me that the arguments are not such as would be expected from the ability of the gentleman who presented them. They are very feeble, and with all respect to the gentleman from Franklin, I must say the same thing of his: Confessedly one of the ablest lawyers upon this floor, for some reason he wants to oppose this section, and he can find no objection to present to the minds of delegates that ought to influence a single vote. He says if you make every county a judicial district, the judge will be familiar to all the people. Why, that occurs now, under the present system, just as emphatically as it could under the proposed plan. Take the district from which I come as an illustration. It is a district with sixty thousand inhabitants and two judges, both of whom live in the largest county in the district, and have lived there all of their professional lives. The present section could do no more than that. The county of Tioga has more than half of the population of that district and both the judges reside there. Are they not, under the existing system, just as familiar to all the people of that county as they would be under the operations of the section under consideration? Precisely what occurs under our present system is that the largest county in a district gets the judge, and will always have him and he will be acquainted with all the people there. This is all that is left of this argument, and it seems to me that it is not characteristic of the ability of the gentleman who made it. It is the greatest argument that he can make against the section, and if no better argument can be

made against it it ought to be adopted, for it has very great advantages and very great merits.

The chief merit which I suggest in favor of the section is that it will prevent the making of double-headed judicial districts where they are not needed and where they do positive harm. In districts with two judges there is always a divided responsibility, and justice is not meted out as speedily as it ought to be or would be in such districts as the section contemplates. Double districts may work well in cities, and very likely they do work well, but this Convention has decided over and over again that it will provide remedies according to the necessities of the location, and it is a necessity of the country districts that they shall have one judge for each district, and that there shall be a law judge in each county.

This section will forever prevent that evil, and it is a growing evil. There are already in the State nine of these double-headed districts, and I feel very confident that there is no delegate here from any one of them who will not pronounce them an evil, an evil to the profession, an obstacle to the dispensation of justice, and an evil to the judges themselves. You can say what you please about the harmony and good feeling that is maintained between the judges in double districts, but I know that the legitimate result of such districts is to create unpleasant feelings, little jealousies and injurious intercourse between the judges and the bar.

For myself I speak entirely without any personal interest, for the county from which I come could not possibly during my lifetime become a judicial district, nor will any county in the district from which I come be affected by this proposition if it should be increased according to the amendments now pending. If it be left at thirty thousand that will make Tioga county a separate judicial district, but my colleague who comes from that county is willing to accept any number that this Convention may see fit to adopt, so that the principle of the section shall be preserved and single judicial districts shall be established.

Mr. CURRY. I shall be obliged to vote against the amendment and against the section in turn. I presume that if there is any question that has attracted the attention of the people of the Twenty-fourth judicial district, composed as it now is of

the counties of Blair, Cambria and Huntingdon, more than another it is the question now before this Convention, and I think that I am safe in saying that I have not heard one man favor the change; but, upon the other hand, they seem to be opposed especially to this section as agreed to in committee of the whole; first, because we have not sufficient work in our district for one judge over six months in the year. In the Twenty-fourth judicial district we have a judge (Hon. John Dean) whose superior I presume cannot be found in the State. Should this amendment or should this section pass he would then be confined to one county, say to the county of Blair. The other two counties, according to this plan, would be entitled each to a judge, as we have in the district, as it now stands, a population of 105,870. We are content with the district as it is. We do not desire any change; first, because the judicial business would not be sufficient to employ any court one quarter of the time in case it was confined to either of the counties named; and second because of the expense. Three judges would be employed to do the work of one judge.

Again, this plan would abandon the associate judges. In our judicial district we have never heard any complaint against them, but claim that they are of great service in their capacity as assistants to the president judge.

Again, in case this section should be adopted and confine us to one judge in the county of Blair, then it is apparent that the compensation of this judge would be reduced, perhaps, to \$1,500 or \$2,000, because those who desire to carry out the spirit of economy would say at once, "surely this judge has nothing to do; why allow him \$4,000?" The people would rise up and say, "this judge has nothing to do, and yet we are paying him from \$3,000 to \$5,000." The cry would become so great throughout the various districts of the Commonwealth that a man of honor, a man of integrity, a man of ability, a man of keen sense of propriety would say at once: "I will not occupy the position." He would resign it at once, because he could make more money in the practice of law at the bar than by occupying the position of judge on the bench.

Now, Mr. President, for these reasons and others which I could state if necessary, I shall be prepared to vote against the amendment and the section.

Mr. BOYD. Mr. President: When this scheme was originally presented I was rather inclined in its favor, but the discussion of the past as well as the present has satisfied me that it will not do at all, for the reason, among others, that the debate seems to be based upon local considerations—gentlemen desirous of providing for their own particular districts, others having schemes looking to some other object, which shall be nameless; and, altogether, I am persuaded that it should be left exclusively to the Legislature.

Now, with a view of accommodating all the gentlemen who are here, and desirous of having a judge in a small county, we have got it down as reported from the committee of the whole to a judge for every thirty thousand population. We all understand exactly how that was accomplished. It was accomplished to enable certain small counties to have a judge, when it was admitted at the time that there was no occasion for such a judge; and it appears to me that this basis of population is wholly fallacious, because there are counties in the State (take, for example, Washington) where they may never have occasion for another judge, it being a purely rural district, and I suppose that as they have no mineral resources it will be devoted in the future, as it has been in the past, to the raising of sheep. Well, I should suppose it would not take more than one judge to adjudicate all the sheep that ever have been or will be in that county; and so of other counties of that description.

Now, you take a populous county, a large manufacturing county, where towns are being built and are gradually growing into cities, only the Legislature can determine, from time to time, the necessity for increased judicial force in those counties. You take the northern tier of counties, sparsely populated, almost wholly undeveloped as yet, still we all know that in the near future they will be developed, for they have immense mineral resources, which will, of course, augment their population and vastly increase their business. Now, for us to undertake to provide now for the future of those counties by specifying the number of judges they shall have, we may fall very short of their requirements, or we may go very far beyond them.

Now, then, it is said here upon this floor, and not denied by any gentleman, that the judiciary system of this State thus far has been a success. I apprehend

one reason for it is to be found in the fact that we have had a judicious disposition, made by the Legislature, of the judicial districts and good men have been selected as our judges. Now, then, if you are going to establish a judgeship in every small county where a judge will not be occupied perhaps more than two, three or four months, you will have a lot of aspirants for the bench in those counties. Gentlemen who have very little business will seek the position for the salary; and you will have those same men, not of any judicial experience or very limited, aspiring to the supreme bench ultimately, and thus demoralize that, or weaken it, by means of this immense accession of the judicial force throughout the counties, and undoubtedly will cheapen the character and standing of the judiciary and of the decisions as compared with what we have had in the past.

I shall therefore, for these reasons, vote against any apportionment of the State at all, and will vote in such a way as to leave it to the Legislature.

It is true that a great objection has been urged to these additional law judges which the Legislature have given from time to time as the exigency of the districts required, yet it will be in the power of the Legislature to revise that, to change it, and if we find the difficulty that we do in apportioning the State judicially, why it is not at all to be wondered that the Legislature has had difficulty. But they will, however, have the advantage in the future of taking up each particular case that arises and provide for it according to its then condition, but for us to undertake to fix up the judicial districts of this State upon a basis such as is proposed it seems to me, upon reflection, is a wild scheme and is likely to be unsuccessful and unsatisfactory.

Whilst I have indicated the vote that I shall cast upon this branch of the pending section I at the same time shall vote for that part of the section which dispenses with the associate judges, because I cannot conceive that they are of any use whatever; and as the article provides that the present judges shall continue until their commissions expire the people will be prepared for the change, and I do not think that any considerable number of lawyers in this body even claim that they are of use, and scarcely ornamental. And therefore I shall ask when the vote comes to be taken that we shall have a division of this section so that we can

have a square vote upon the number of judges that we are to have; and also upon the latter part of the section in relation to the associate judges.

Mr. J. N. PURVIANCE. Mr. President: I feel reluctant to see a vote taken on a question in which I feel that my constituents are so much interested without at least expressing my sentiments in regard to it. Since our recent adjournment I have mingled somewhat with the people of the counties of Armstrong, Venango, Clarion and Butler, and I have found a very general sentiment throughout those counties, and that is in favor of each county of a population of some thirty thousand or thirty-five thousand or forty thousand having a president judge. If there be any one subject upon which the people complain more than another, it is the delay in getting their causes tried. It is a subject-matter of universal complaint throughout this entire Commonwealth, and the people everywhere are looking to this Convention for a remedy, and it strikes me, so far as I can see, that this section is the proper remedy.

If it increased the expenses of the judiciary even that would not be an objection to it, because it is one of the duties which this Convention owes to the people to provide for the speedy trial of causes in each county as possible, to prevent delay in litigation. The party desiring to delay litigation is generally the party who has the wrong side of the case, and in many instances it happens that for years a just cause cannot be tried because of the impossibility of getting it upon the trial list, and the court in session prepared to try it.

If I could so amend the section I would throw upon the president judge of each county of a population of, say thirty-five or forty thousand, all the probate business of that county; the granting of letters testamentary and letters of administration, the granting of orders for the sale of real estate, the appointment of guardians, &c. I would require that president judge to do all such business, and in that way throw upon him an amount of labor which would occupy nearly his entire time. There is no class in this community that require protection more than the widows and the orphans, and there is no class in the whole community that is less protected, arising from our judicial system as it exists in Pennsylvania at this time. We have heard of the iniquities practiced in the city of Philadelphia, and

they exist to some extent in other counties and are permeating, as it were, the whole State. In every county, even the smaller counties, this system of auditing accounts and expenses incident to it exists. Now, if we had a president judge in each of the counties of the State with the population I have named, and all the probate business was required to be done by that judge in addition to the ordinary business of the common pleas and quarter sessions, and oyer and terminer and other courts, I take it he would have enough on his hands to occupy his entire time.

Then as to the expense, if you abolish the associate judges in the State, the cost of that branch of our judicial system is about \$60,000 a year. It is generally conceded that it is to some extent useless. It is not regarded as a necessary arm of the judiciary at all. If you dispense then with the associate judges, and thereby save the treasury \$30,000 a year, and adopt the system now proposed and add to the president judges about twelve, because that is all the addition it will make, you would add, say \$48,000, to the expense of the president judges and you would save \$30,000 by dispensing with the associate judges.

I am struck forcibly with the idea, and therefore I am inclined to address the Convention particularly on this point, that it is the duty of the Convention to do something (whether this is the best plan or not I do not know) to protect the estates of decedents. If you make the president judge of the county the probate judge, and he takes his seat upon the bench and examines critically and closely all accounts of executors, administrators, guardians and trustees, without any fee whatever, with no auditors to appoint, for he must be the auditor himself, and if he is not fit for that he is not fit for the place of president judge—I say in that way you would protect those who cannot protect themselves, and you would be doing a great service.

In conversations throughout the counties I have named, as well as various other parts of the Commonwealth, I have never yet found one single person to dissent from the proposition that each county with a population of thirty-five thousand or forty thousand should have a president judge, and I have never yet seen one either who objected to the abolition of the associate judges as wholly unnecessary. Of course the commissions of those in

office at present would expire by their own limitation. It is not proposed to interrupt the course of things at once or abruptly, but gradually, and the new system would come into operation to the great satisfaction of the whole people.

I need not repeat what has already been said that in every county in this State there are cases pending on the docket from two to five and seven years that cannot be reached and tried because the courts are not held often enough to dispose of them. If, then, you have a president judge in each county, and that judge holds all the courts, including the probate court, and you give him full and entire jurisdiction over the estates of decedents, there is not a county of the population I have named but would have given them the advantages I have stated. I do hope therefore that this section will prevail. I am satisfied that we shall make no mistake; in our proceedings here we should be desirous to commit no errors if possible, and I am satisfied that we shall make no mistake in establishing these county courts. They are looked for and expected by the people, and I trust the Convention will adopt them.

Mr. GILPIN. Mr. President: I had intended to keep quiet on this subject because at this stage of the sessions of the Convention it strikes me that no person can advance its business better than by remaining silent; but inasmuch as the gentleman from Butler has referred to Armstrong county as approving of this section, I am compelled to rise and explain (at least so far as I have been able to ascertain) what the wishes and opinions of the people of that county really are. After this section was adopted in committee of the whole I chanced to go to Armstrong county, and at a time when I was myself favorably impressed with the section, although I confess I had given it then but little consideration, and whilst there I found almost every man who had thought on the subject and had taken the trouble to look at our proceedings to be opposed to this provision. Many of them said, and said truly, that we could get along as well with a county judge there as with two or three judges in the united district as it now stands.

In regard to the principle involved, I think that the Legislature should have prescribed for it some rule or other—that is, we should not district the State, but we should mark out some lines within which the Legislature, upon this sub-

ject of making judicial districts and giving new law judges, should be confined. Now it is left to the Legislature's discretion entirely, and if anyone will take the trouble to look at the size of the various districts they will see the very great discrepancy that exists. They will see our district, the tenth, with one hundred and thirty-eight thousand population, and having but a single law judge, which is more population than any other district in the whole State has that has two judges.

But it may be said, "why do you not apply to the Legislature?" We have applied, yes have applied twice at least, every county in the district asking for it, and the Legislature has twice refused it. We are now entirely helpless. I confess that the legal business in the district is very much in advance of that which has been disposed of by the courts there, but the reason is that the district being thus large, our recent judge, Hon. Jos. Buffington, who was really worked to death, and died after a sickness of perhaps ten months, in which there was no resignation, and in which, of course, business continued to accumulate, and the present incumbent when he went upon the bench was met by a mass of undisposed business absolutely appalling. With more of courage than of proper regard for his physical strength, he has striven to stem this current of accumulated and current business, and by almost constant sessions of courts since he came upon the bench has kept pace with the latter and made some headway against the former. But physical strength can only bear so much of a strain, and if any man's is great enough to enable him to entirely dispose of all the accumulated and untried causes of that district, no one's is sufficient to do it and support life for any considerable time after the accomplishment of the feat. Does this proposed section remedy the evil under which we suffer? It may seem to do so, but I fear that if it is adopted that it will produce other evils greater than those it cures.

What is urged in advocacy of it? "That it brings justice to every man's door; that the judge comes almost to his door." But what kind of a judge comes? As has been well said, a small judge, not the judge of a large district, and it might also be said one that is less impartial; honest he may be, but he is still a man, and every man is influenced,

whether he knows it or not, by those about him. His social, his business and his political relations are all confined to one little section—that is, to a small population; he is there day in and day out; he participates in the field of local politics and may be controlled by local politicians, while a judge whose district is extended, over say three counties, and who is in each county less than a third of his time does not take any notice of or feel any interest in the petty affairs of a neighborhood or a county.

And it must be recollected that we have put into this article no provision prohibiting judges from being candidates again in their particular districts. Much has been said of the evils of an elective judiciary, and we can contemplate and imagine what kind of a judge there would be upon the bench who was a candidate for re-election in his own county, that county alone composing the district, when, as we know, counties are really controlled politically by two or three men. Imagine a county with two or three men, perhaps, as suitors in his court, who hold his re-election in their hands. Could we hope that he could under such circumstances be just against his masters? Such a danger or temptation would not be presented were the district larger, because the one county would not control the district; when we look at the question practically we see that it is beset with many evils.

Again, if we are to select a judge in the county, manifestly we should take a lawyer in good practice. We elect him, and what is the result? No cases can be tried before that judge perhaps for three years, perhaps for five years, because he is interested in every suit. But it will be answered, we may elect a judge out of the district. That is very hard to do unless he is a very popular man, and practically it will amount to nothing. But it will be answered again, "get the judge of a neighboring district to sit in such cases." We in our county have had some experience in that direction, and we found during the sickness of Judge Buffington that this thing of borrowing judges causes very great confusion. They have different rules of practice in the districts from which they come, and that leads to confusion. They are not acquainted with the various members of the bar, and sometimes they are prevented by business in their own districts from keeping their engagements in the needy county, and there

suitors bring their witnesses, prepare their causes and do not get them tried because there is no judge. After the experience in our county of getting judges from neighboring districts, I think I can fairly say that it was not satisfactory; and if we had to elect a judge in every county the same thing, I doubt not, would be the result in each particular county. In case of the sickness of the judge the same inconvenience would ensue.

Now, if, instead of adopting this section, some provision is adopted requiring judges to be elected in the various districts when the population of the district amounts to some fixed number, then you would have a rule laid down to govern the Legislature, and then you would have some fixed amount of judicial force given each one of the districts, and with this advantage where you have two or three counties in the district. Now, under this section as reported one county having but little business, no other would be benefited by the leisure of the unemployed judge. But if the judges are for the whole district, what one county lacked in business would likely be made up in the others, and in the case of the sickness or the disqualification of the judge by being interested in the cause, wherever that occurred one or both of the other judges that happened to be in the district would supply the place, and the business would go on without any trouble or delay whatever.

So I think that if there is to be any change made at all (and I believe there should be a change) it should be in prescribing some rule by which the Legislature hereafter may be governed in the creation of new judges wherever they may be required. We should not leave the determination of that question in the hands of the Legislature entirely, but that we should prescribe some fixed rule. For instance, we might say that a population of 30,000 over a certain amount should be entitled to another judge, or let it be 50,000, or whatever number you choose to fix. It should be a certain number, so that it would not be in the power of the Legislature to refuse the application of the people of a district when they reach the point that may be fixed as entitling such district to an additional judge.

Mr. BEEBE. Mr. President—

Mr. CORSON. Make it short.

Mr. BEEBE. Mr. President: The gentleman from Montgomery (Mr. Corson)

requests that I shall "make it short." I understand the feeling in the Convention. I understand that men had rather vote than talk; but inasmuch as the gentleman from Crawford (Mr. Minor) and the gentleman from Venango (Mr. Dodd) and various other members representing our portion of the State are absent, and inasmuch as we have not been at all represented in our opinions and our necessities, I beg the Convention to hear me for a few minutes. I ask the city delegates both from Pittsburgh and Philadelphia to mark that if this section is voted down and we are not to have a judge for thirty thousand or forty thousand inhabitants in a county, we must inevitably have associate judges continued, for the simple reason that to the mass of the people, circumstanced as they are in various counties, it would amount to a practical denial of justice in multitudes of cases in case this section should be voted down.

I need only say that a good deal of our time is occupied in motions at chambers or preliminary motions, equity, &c., and that it would require a travel of from sixty to seventy miles in almost every instance in order to make a simple motion or obtain an order.

After this section was debated before and considered, it seemed to meet with the favor of the Convention; but I observe that there has been a material change in the opinions of many gentlemen who say they had not sufficiently investigated this matter, and they propose now to vote against the section. I think I know why, or one reason at least, and that is this: The gentlemen in this Convention are largely lawyers, and their first impulse is to sit down and write to the judge of their district to know what he thinks about it. Now, I ask gentlemen to consider for a moment what the judge would say in the light of human nature as we find it? In the first place, he would not wish to say he was overworked; he would not wish to say that he wanted less to do, with the same salary. In the second place, I ask you, gentlemen, if you were to consult the Governor of Pennsylvania to-day as to the propriety of dividing the State, or the President of the United States as to cutting off a portion of the Union, what do you think would be the reply? What would be the reasonable reply of every man holding a certain amount of power, taken in the aggregate? "I do not want my power limited." I submit no man would. But it is from the

judge's stand-point that gentlemen look at it when they express that opinion which is derived from the opinion, I believe, of the judge himself. Judges have expressed this opinion whom we know are overworked every day of their lives, and whose health and whose lives are imperilled by the amount of work they are doing.

But, sir, the argument seems to be put in this way: 30,000 people do not have enough for a judge to do. As the gentleman from Tioga (Mr. Elliott) remarked yesterday, I think that is no answer to this question at all. The question is whether 30,000 people are so situated that they demand a judge for their convenience and for the administration of justice. But it does not rest here; 30,000 is really made the minimum, and there are very few counties but have a larger population and more business than would be indicated by the gentleman's argument. Why, Mr. President, look at your own county of Erie. You have plenty for one judge to do. You are now joined with another county in a district. Look at Crawford county. Already it has had a separate district, and as the gentleman from Potter (Mr. Mann) very well remarked, whenever a county has secured a judge they know too well the convenience of it to ever be joined with another county in a district again. Look at the county of Venango, with plenty to do for a judge, whenever this Constitution shall be adopted. Look at Butler; and all the counties around will have plenty to do; and we are not providing here merely for the present time, but gentlemen must look ahead, at the rapid increase of business and population in the State of Pennsylvania, and look ahead for twenty years, and see then what the deliberations of this body would have to do with what we should find in the future.

But, Mr. President, we propose that the associate judges' office shall be abolished. I admit that public sentiment in our section of the State is somewhat in favor of their abolition, and prefers the single district system with one law judge. I will admit that to be public sentiment, whether it be right or wrong—I think wrong. But we have additional business that an associate judge is compelled to do by virtue of his office, and that business is hereafter to be done by the law judges, and what is it? Locally the associates are the judges of the character and capacity of men who offer themselves as bail for men

charged with offenses, and as sureties for men in public station, and as guardians, appointments for offices, &c., and all this local knowledge is required in order that a judge may act judiciously; and we certainly have in this case to substitute the president judge for these associates for the purposes for which they were formerly elected.

I trust, therefore, that the Convention will bear in mind that if this section is not accepted, if it shall be voted down, it will be with the distinct understanding that we must necessarily have, in order to save this Constitution, at least for our section of the country, the office of associate judge retained. At the same time I believe it is the will of the majority of the people that the single district system be established, and the office of associate judge abolished.

MR. DARLINGTON. Mr. President: I am decidedly in favor of the principle contained in the body of this proposition before the Convention. If it is practicable to carry it out it is certainly the thing which everybody would desire to have—a judge for each county that contains the requisite business, and the residence of that judge in the county. This would promote the convenience of everybody in the county better than any other arrangement which can be made. But inasmuch as it is impracticable to carry it out to the fullest extent, the only next best thing we can do is to carry it out as far as we can and apply it to every county that has the requisite population and business. As to other counties that have not the requisite population this must be regulated in other ways; they must be grouped together so as to give the requisite business to the judge, and at the same time as far as possible promote the convenience of the suitors.

How shall we best carry out this idea? I am not very solicitous about the precise number that shall be fixed upon as constituting the requisite population. Let that be 50,000, or if you please, 70,000. I am not in favor of making these districts so small in population and business as to give the judge insufficient labor. You elevate the character of the judiciary, you draw out the best talents by giving it hard work. We have several large counties which have sufficient business for a single judge, such as Berks and Lancaster, each of which now has two, but who ought to get along with one apiece of the right stamp. So with every other county so

circumstanced, I would restrict it to a single judge and that judge should reside in the county, because, deny it who will, there is a vast convenience in having the judge reside in the county where the business is transacted.

In a county situated as ours is we do not need a single judge. He can still do the business of Chester and Delaware, which is the most convenient county to annex to us. As we are circumstanced, there is no need of a single judge and there is no need of another district. But we do not know that we shall always be so fortunate as we are now. The excellent judge who presides over that district may be translated, without seeing death, to a higher position, and we may have to put up with an inferior judge. I mean a man of less physical and mental ability, but still we may be so fortunate as to get along with the business a little behind what it is now. Still there is not as yet any fear but that we shall obtain either from my friend from Delaware (Mr. Broomall) or from some other source a judge competent to do all the business of the district.

So take any other district; take Lycoming, if you please. There may be enough business there for a single judge, and if there be the district should have a single judge. So with every other county, whether it be Venango, Erie, Warren or any other, which has the requisite amount of population and business. If it has these requisites it should have a single judge. I know very well the possible inconvenience to which every county is subjected which has not a judge residing within it. We had a taste of that ourselves upon a former occasion. One of the best judges in the State, presiding over our district, resided in Doylestown, and the consequence was that when attending our courts he was uneasy and restless and would not stay until the business was fairly over, and sometimes he would keep the court in session until midnight in order that he might reach a morning train; and this worked us too hard. Judge Chapman, of Doylestown, was an excellent judge, but we suffered great inconvenience from the fact that he did not reside in the district. He did not choose to move there for the short time he was likely to be upon the bench.

I think we ought by all means to attain that object, if it can possibly be attained. In every part of the State, where they have population and business enough, let

the judge reside in the district, and then he will always be at home and will be himself at ease. He can be with his family at night and among his books when he is not in court, and the business will be better done thereby. If this cannot be entirely carried out, let it be carried out so far as it can be attained by the adoption of the principle we have before us, taking the figures so as to suit the views of the great body of the Convention. I shall be satisfied with that; but as a necessary concomitant to this plan, whether we have a judge for every county or not, let us abolish utterly the associate judges unlearned in the law. Under no circumstances ought they to be retained. They are of no kind of use. Gentlemen from other parts of the State tell me that they find them convenient because they can make application to them to set aside a writ, to stay an execution, or to open a judgment. All this, however, can be devolved upon the prothonotary, and it will be in ninety-nine cases out of one hundred better done, because the prothonotary will be better qualified to grant these preliminary motions than any associate judge unlearned in the law whom you can pick up. I do not now allude to one or two anomalous instances where the associate justices have been very excellent gentlemen learned in the law, gentlemen of the bar who had retired from the profession and had been selected as associate judges, but I take the great mass of associate judges all over the State, and I ask of what use is it to keep those associate judges upon the bench at an expense of \$60,000 a year? They are purely ornamental, as my friend from Montgomery (Mr. Boyd) has said, and sometimes not even that. Let us abolish them utterly. Let us fix this ratio at a sufficient amount, say fifty thousand, if you please, so as to insure business enough for a law judge in every single district where he shall be elected.

Then what follows? If he is short of business in trying cases, as has been suggested by some gentlemen upon this floor, he can aid in the auditing of accounts, and he can save to the suitors an immense amount of money by attending to the settlement of all such questions. Wherever they have disputes let him call the parties before him, and his decision will be generally satisfactory. I speak this without any fear, favor or affection. I certainly have no aspirations for the bench, and it would be inexpedient for anybody to

think of putting me on the bench. I prefer the elevation of the bar.

Mr. ARMSTRONG. I presume that this debate has already lasted so long as to weary the Convention; yet I deem it my duty to say a few words on the question, even at the risk of being tedious. I have listened with great attention and interest to the debate on both sides, and I am in strong sympathy with every desire expressed to afford the utmost judicial facilities to every part of the State, and in just proportion to its necessities. The point upon which I differ with many gentlemen upon the floor is this: I regard it as a pernicious principle to base judicial districts and to judge of judicial necessities by reference to the mere numbers of population.

But, in addition to that, the principle itself is impracticable in its application. Let me call the attention of the Convention to a few of its difficulties. The county of Lycoming has been referred to. It constitutes now a single judicial district, with an amount of business pressing upon the courts which leaves our trial lists more than one year behind; and yet we have a population of about 50,000 probably, not exceeding that. We have, in the judgment of the Legislature, and sufficiently justified by years of experience, a population and a business which require that that county should be a separate judicial district.

But by way of contrast—and showing the insufficiency of population alone as a safe basis—look at other counties and other districts of much larger population. Take the Twenty-fourth district, composed of the counties of Cambria, Blair and Huntingdon, embracing a population by the last census of over 105,000, and now claimed by members of that district on this floor to embrace 120,000. It is confessed by the members representing that district that there is not business enough in the three counties which compose it to occupy the attention of a judge for more than one-half of his time or six months in the year.

Mr. CORBETT. Will the gentleman permit himself to be interrupted?

Mr. ARMSTRONG. Certainly.

Mr. CORBETT. If you elect a judge and work him six months of the year, I ask if that is not as much work as he ought to do upon the bench? Where will then be his time to read and revise?

Mr. ARMSTRONG. I made no reference to the bench. I spoke of working a judge

six months in the year, which embraces his work on and off the bench, and by the statements of the gentlemen who represent that district there is not enough business there to employ his time, either on the bench or off, more than six months of the year.

But there are other districts. I have the statistics of Cambria county, which is one of the largest counties of that district, and the figures justify fully what has been stated by the gentleman representing it here. If 30,000 population is to compose a district, what will you do with the county of Greene, which is a county of over 25,000, whilst its adjoining county of Washington has a population of over 48,000, and Fayette, its only other adjoining county, has a population of 43,000.

Mr. KAINE. Will the gentleman from Lycoming allow me to answer that question?

Mr. ARMSTRONG. Yes, sir.

Mr. KAINE. Why cannot Greene county remain with Fayette, where she is now?

Mr. ARMSTRONG. That is what I was about to say myself. Create it by the Legislature into a judicial district, by attaching to it the county of Washington or the county of Fayette. But this is inconsistent with the principle on which the section is based and demonstrates how difficult, if not impossible, it is of practical application. If you will look over the counties in the western part of the State you will find that the county of Lawrence, with a population of twenty-seven thousand, is surrounded by the county of Beaver, with a population of thirty-six thousand, and the county of Butler, with a population of thirty-six thousand, what will you do with Lawrence? So, again, you may take the county of Somerset, with twenty-eight thousand, which is surrounded by the county of Fayette, with forty-three thousand inhabitants; Westmoreland, with fifty-eight thousand; Cambria, with thirty-six thousand, and Bedford, with twenty-nine thousand six hundred and thirty-five, which is doubtless over thirty thousand by this time. These are all instances, and others might be cited in which there is an absolute necessity for the exercise of legislative discretion, and in which the principle of the section must be set aside.

Mr. HARRY WHITE. Will the delegate allow me to interrupt him?

Mr. ARMSTRONG. Certainly.

Mr. HARRY WHITE. I aver that today Somerset county, with its railroad and coal works, has thirty thousand population, which would make it a separate district.

Mr. ARMSTRONG. I have no doubt of that, and I was about to further suggest what difficulty it leads to. The counties of Somerset and Bedford are adjoining counties. Bedford has twenty-nine thousand. If the district is to be composed upon the basis of the last census, then neither of them can be made a separate district, and if new enumeration is to be made it must be under some law yet to be enacted, and will necessitate a State census in some form, either general or partial. Without this a county might have the required population and no means of ascertaining it.

But suppose these counties, or any others, to have less than the requisite population for separate districts, and to be formed into one district, and in the course of one or more years thereafter the population of either county is legally ascertained to equal or exceed the constitutional requirement for a separate district. The Legislature would be shut up to the necessity of constituting such county a separate district, if, indeed, any legislative action would be at all required. But if so what is to become of the smaller attached county, and what is to become of the judge, and if they are to remain associated what becomes of the constitutional provision conferring the right upon the large county to be a separate district? Thus at any point, in spite of such constitutional requirement, its provision would go halting to an important conclusion. There are but few counties which could derive any advantage from such provision, whilst the embarrassment it would involve in the exercise of sound legislative discretion would be very great indeed. I can conceive of no practicable mode of putting this system of separate judicial districts into practical operation which does not necessarily involve the necessity of uniting counties as virtually to constitute a system of districts composed of adjoining counties, and this is our present system. The limitation proposed would seem to be fruitful only of trouble and embarrassment.

These difficulties might, and I believe would, extend largely over the State. We in this Convention cannot anticipate to what extent such difficulties would occur. What I have stated appears on the face of

the map on a merely cursory examination, but when it comes to be actually applied to the State at large, I apprehend the difficulties that must necessarily be encountered would be extremely great. And they all grow out of the same fundamental difficulty that population cannot be made a safe basis for judicial apportionment. Who can tell where we would land in the effort to construct a system of judicial districts upon such a basis? This section if introduced will necessarily compel the Legislature to re-district this State. If so, who will be struck? What judges will remain and what judges will be removed; what counties will go in and what counties go out, and where and what will be the new connections? The disturbance of the judicial system in one district is certain to affect the adjoining district. It cannot be otherwise. You have judges who now preside over four counties. It may chance that the largest counties may soon have population enough to compose a single district. How will it be with the other counties? The large counties would have a constitutional right to claim a separate judge and a separate district, whilst it would leave the other counties formerly attached to it with less population than is sufficient for a judge. What shall be done with them? If they are to be attached to larger counties with the requisite population then such county is deprived of its constitutional right. These things would inevitably occur, and other difficulties which no human foresight can anticipate or provide against.

But let us for a moment look more particularly at the several parts and relations of the section.

The first paragraph provides that thirty thousand shall be the population requisite for a separate district, but when it comes to the third, fourth, fifth, sixth and part of the seventh lines, it is merely enacting in the Constitution a power which the Legislature clearly possesses, and which they could clearly exercise without the necessity of placing it in the Constitution at all. All that part of the section then is totally unnecessary, and ought not to encumber the Constitution.

Mr. KANE. Will the gentleman allow me to ask him a question, as he has the conclusion?

Mr. ARMSTRONG. Certainly.

Mr. KANE. I want to know of the gentleman if the same objection was not made to fixing the number of seven

judges of the Supreme Court in the Constitution, but he thought that was all right? The Legislature could fix the number of judges of the Supreme Court just as well without putting it in there and better than they can with it in there; but it requires a constitutional provision in order to bring the Legislature to the right point. That is what we want here.

Mr. ARMSTRONG. No person, I suppose, ever questioned or denied that there was power in the Legislature to increase the number of judges of the Supreme Court, and the increase of judges there was not based upon any want of power in the Legislature, but because it was expedient that it should be thus embodied in the Constitution. The same question arises here precisely, and it is now a question of expediency. Why should we enact in this Constitution that which the Legislature has the right to do unless there be a paramount necessity which compels them?

Mr. KANE. I say there is.

The PRESIDENT *pro tem*. The time of the delegate from Lycoming has expired.

Mr. CUYLER. I move that he have leave to continue.

Mr. ARMSTRONG. I will not take up further time.

Mr. COCHRAN. Mr. President: I do not intend to go into any general discussion, but the pending question immediately before the Convention is the amendment which was offered by my colleague from York, (Mr. Gibson,) and I hope that in the discussion of the general subject, which has been carried on here at such length, that amendment will not be forgotten. Whatever be the fate of this section or the fate of the amendment to it, I hope the amendment to the amendment will be adopted.

The effect of the amendment offered by the gentleman from Dauphin will be to increase the specified number of persons residing in a county to be entitled to a separate judge to fifty-five thousand. That would necessitate the addition of a number of other counties to adjoining larger counties in order to constitute a district. You may take as an illustration the district in which I reside; the county of York having a population of some seventy-six thousand inhabitants, and the county of Adams something over thirty thousand. They have constituted a district for nearly forty years, and they will probably remain as a district under the provisions of this amendment. Now, it is

necessary that the amendment to the amendment should be engrafted on the amendment in order to enable that district to be accommodated; for the amendment simply says that each separate county having a population of one hundred thousand shall have two law judges. In order to meet the case of that district you must make that apply also to districts which are composed of more than one county, and therefore it is important that the amendment of my colleague should be engrafted on the amendment of the gentleman from Dauphin, whatever may be the fate of that amendment when it comes up for consideration. I hope, therefore, that it will not be overlooked and voted down, but that the amendment of the gentleman from Dauphin will be so perfected.

As regards the section itself, Mr. President, I do not see exactly how I shall be able to vote for it. If the principle of probate courts in the several counties had been adopted, and some provision made by which, in small districts containing not more than 30,000 population, the duty of probate judge could have been imposed on the courts of such counties, I probably should have supported the section, but that has gone by, and it seems as if we cannot get back to it or repair it. If this section be voted down I shall be compelled to move a reconsideration of the twenty-first section, which imposes upon the courts the duty of auditing all accounts. That becomes, under those circumstances, utterly impracticable. The judges of the districts cannot attend to that business, and to apply a provision of that kind to all the districts in the State would be practically to defer the settlement of decedents' estates to an indefinite time. That must be either stricken out or it must be confined, as it was originally, to counties in which the separate orphans' courts are established under that section. I know that it may be said that it will be a strong inducement to the Legislature to establish separate orphans' courts, to let it remain; but that is one of those contingencies which it is not wise, in my judgment, to depend upon. The Legislature might, nevertheless, refuse, because every additional orphans' court would impose an additional tax upon the public treasury for the payment of its judge, and therefore it would be very doubtful whether, even in the most meritorious cases, the Legislature would

be willing to listen to the demand or to comply with it.

I shall therefore, if this section should be voted down, move a reconsideration of the vote on the twenty-first section, though I voted for it in the condition of things as they then stood, with this section in the report of the committee of the whole unacted on—so that that portion of it may be changed.

Mr. M'MURRAY. Mr. President: I do not rise to make a speech or to detain the Convention from a vote on this question, but to discharge a duty which I believe I owe to the people immediately represented here by me.

When this question was before the Convention on a previous occasion I believe I voted against the section, not because I was opposed to it so much as because I favored another proposition. When I found that the proposition which I preferred had no chance of passing here I then favored this section rather than the system we have now. But, sir, I find that the people of the county in which I reside are almost unanimously opposed to this section. I believe every lawyer in the county is opposed to it, and their opposition is very active. During my visit to my home recently I conversed with nearly every lawyer in the county, and they all expressed themselves to me as being decidedly opposed to this section.

Even if I were personally in favor of it, under the circumstances I could scarcely justify a vote in its favor, especially when I learned that the people and the bar of the county of Armstrong, which is also in the same district, are opposed to it; and the same feeling prevails in the county of Forest, and to a large extent in the county of Clarion. However, the delegate-at-large from that county (Mr. Corbett) can speak for his own county.

I have some views on this question, but I will not express them at length now. I think under the circumstances the best thing we can do is to leave the question in the hands of the Legislature. With reference to this question, we have not the ground for complaint against the Legislature that we have had on many other questions. But seldom have we had occasion to complain of any act of the Legislature with reference to our judiciary. In one or two instances they have failed to do what many thought was their duty, and in one or two instances they attempted to do that which plainly was not their

duty and was beyond their power. With these exceptions, however, there has been but little ground of complaint. Therefore I shall vote against the section, and I simply wished to give these as my reasons for that vote.

Mr. CORBETT. Mr. President: I had not intended to trouble the Convention with any remarks on this question, and would not do so now if I had not been referred to by the delegate from Jefferson county. If the question could be referred to the Legislature to re-district the State as a whole, I might be willing to entrust the duty to that body; but that is an impossibility. It would interfere with the terms of the incumbents in the several judicial districts of the State; and you are well aware, Mr. President, of the decision that territory that took no part in the election of a judge cannot be attached to other territory over which a judge presides elected by it. Whenever you throw the districting of the State of Pennsylvania into the Legislature you meet with difficulties, and it will fail. The Legislature is not able to re-district the State under our elective system. They may make a new district, carve it out of other districts, or they may divide a district, and there their power ends.

Now with reference to the people of my county, if I am to speak for them, they are in favor of separate judicial districts by county lines. There is no question about that, and under this article, in my view, it becomes a necessity. You have now thrown the auditing upon the courts. I ask you, how is this auditing to be transacted and carried on if the judge is to live outside of the county limits?

Not only that; the convenience of the people of this State requires the adoption of some proposition like this. It is only a few years since that equity jurisdiction was engrafted upon our courts. An associate judge amounts to nothing when you come to proceedings in equity. Under the equity rules all orders are required to be made by a law judge; and I ask you, Mr. President, how the business of the State is to be transacted if judges are not convenient to the people? I know that it will become an impossibility. The needs and wants of the people of Pennsylvania ought to override every other consideration in this matter. The question is not whether a judge is worked up to his full capacity or not, but what do the business wants of the people of the

State require. I live in a county that will give a judge sufficient work, and it probably has but little over 30,000 population at the present time, and it is an impossibility now that the needs and wants of that people can be satisfied without having a judge learned in the law. If the president judge resides in an adjoining county you must go there for every order. Again, under the equity practice, which is now becoming a very important branch in Pennsylvania, it is absolutely necessary that a judge should be in the county from one to three days in every month.

Mr. President, I shall vote for the section as it is. One thing is evident: We either ought to have single judicial districts in the State of Pennsylvania or we ought to have double ones—districts composed of several judges or single districts. I listened to the argument of the learned gentleman who is the chairman of the Judiciary Committee on this subject, and I recollect the force with which he put it when he spoke of three judges or more in a district, each having equal power, each being able to overrule the decisions of the other, and he cited the judicial system of New York, and I know the effect and force with which that argument struck the Convention. And yet the proposition here is to reject this section; the proposition is to leave us under the old pernicious system, where you have districts that need additional force, such as the district of Westmoreland, Armstrong and Indiana, and other districts now having associate or assistant law judges in order to transact the business. Are we to continue this? Are we to leave it as it is, and incur the difficulty that the chairman of the Judiciary Committee pointed out in a former argument here? Is that to be continued? My colleague from Armstrong county (Mr. Gilpin) is in favor of judicial force in that district, and he knows it is required. There is a district that requires from two to three judges actually to accommodate the business wants of the community, and yet he is opposed to dividing it by counties; why, I cannot tell, unless he is afraid that some person will be elected judge in his county who may not be the person that the bar or the people desire. If they want material they can go outside. The fact that they have not the material on hand is no reason why single districts shall not be made throughout the State, a uniform system of districts that will meet the wants of the community.

Mr. President, I should not have troubled the Convention even with these few remarks if I had not been referred to.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Gibson) to the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. HARRY WHITE. I rise to a parliamentary inquiry. It is some time since the amendment was offered. Let me inquire whether the state of the question is as follows: The original section was under consideration, and the delegate from Dauphin (Mr. Alricks) offered an amendment, which has been laid on our desks, providing for districts with a population of 55,000, and so on. Then an amendment to that amendment was offered by the delegate from York (Mr. Gibson.) Is that the situation?

The PRESIDENT *pro tem*. That is the state of the question.

Mr. HARRY WHITE. I hope, then, that the friends of the section will vote against the amendment to the amendment.

Mr. WRIGHT. I call for the reading of the amendment and the amendment to the amendment.

The CLERK. The amendment to the amendment is to insert after the word "inhabitants," in the first line, and also in the third line the words "or where two or more adjoining counties constitute said number such county or counties," so as to make the amendment read as follows:

"Every county containing a population of not less than fifty-five thousand inhabitants, or where two or more adjoining counties constitute said number, such county or counties shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants, or where two or more adjoining counties contain said number, such county or counties shall constitute a separate judicial district and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

The question being put on the amendment to the amendment, a division was called for, and there were were thirty-one ayes.

Mr. COCHRAN. As I observe there are many gentlemen not voting, and as the gentleman from Indiana (Mr. Harry White) made a very prejudicial remark

in reference to this proposition, I should like to have the yeas and nays upon it.

The PRESIDENT *pro tem*. It requires ten gentlemen to rise to sustain the call.

Ten delegates rising to second the call, the yeas and nays were ordered, and being taken, resulted as follows:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baer, Bailey, (Huntingdon,) Biddle, Brodhead, Bullitt, Cochran, Cronmiller, Davis, Fulton, Gibson, Gilpin, Guthrie, Hall, Lamberton, Landis, M'CLean, M'Murray, Palmer, H. W., Patterson, D. W., Reed, Andrew, Ross, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry and Wright—29.

NAYS.

Messrs. Armstrong, Beebe, Bigler, Black, Chas. A., Boyd, Broomall, Brown, Buckalew, Carter, Clark, Corbett, Corson, Curry, Curtin, Cuyler, Darlington, De Franco, Dunning, Edwards, Elliott, Ewing, Finney, Funck, Hanna, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Knight, Lawrence, Lear, Lilly, MacConnell, M'Culloch, Mann, Mantor, Palmer, G. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Rooke, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Walker, White, Harry and Worrell—60.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Dallas, Dodd, Ellis, Foll, Green, Harvey, Hazard, Heverin, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Niles, Parsons, Porter, Runk, Struthers, Temple, White, David N., White, J. W. F., Woodward and Meredith, *President*—44.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. COHRSON. Now, I move to strike out "one hundred thousand," in the third line, and insert "seventy-five thousand." I do this because I am in favor of the section itself, but for fear that this amendment may pass I hope this amendment to it will be adopted.

The amendment to the amendment was rejected.

Mr. HALL. For the purpose of raising distinctly the question as to the number that ought to constitute a single district, I ask for a division of the amendment, the first division to end with the word "law," in the second line, so as to read :

"Every county containing a population of not less than fifty-five thousand inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law."

Mr. SIMPSON. I rise to a point of order. The amendment is not susceptible of that division, for if the first clause is voted down the second cannot stand.

The PRESIDENT *pro tem*. The Chair is of opinion that the point of order is not well taken. The second division may stand if the first is voted down. The question is on the first division of the amendment, ending with the word "law," in the second line.

The division was rejected, there being twenty-five ayes, less than a majority of a quorum.

The PRESIDENT *pro tem*. The second division of the amendment is now before the Convention.

The division was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. FULTON. I offer the following amendment: Strike out all after the word "section" and insert :

"Each common pleas district shall be entitled to at least one law judge for every seventy thousand inhabitants, and the Legislature shall from time to time provide for the election of additional judges to meet excess of population. Where there is more than one judge in any district, no two judges shall reside in the same county unless there be more judges than counties in such district. The judges shall have the right to select counties of residence in the order of seniority of commission."

I desire to say a few words, Mr. President, in explanation of the amendment. There are two questions here that seem to present themselves and require to be passed upon by the Convention. The first is that urged by the advocates of the original section before the Convention, that some number of population should be fixed that should entitle any county to a judge. The number fixed in the original section is thirty thousand. Now, Mr. President, I undertake to say that that

number is so far below the number that the experience of the members of the Convention must show them requires a judge that it cannot be sustained. It is true that the beautiful picture that we had drawn yesterday evening by the delegate from Allegheny on my right, (Mr. S. A. Purviance,) if based on a true premiss, had many things in it to induce the members of this Convention to support it. When we were told here that we were about to erect a monument that would stand for ages, showing the wisdom and the far-seeing into the future of this Convention, that would stand there long after each individual member of this Convention had been followed by slow and solemn procession to his last resting place and the cold clouds of the valley had covered our mortal remains, and after our spirits had taken their flight beyond where the moon-beams play and the wind's harps sing their doleful melodies, that this section should still stand as a monument of our wisdom—was very flattering indeed to the members of the Convention; but, sir, I say that with all its fascinating dreams the premiss is false, that this is not one of the kind of things that we can erect here as a monument through all the mutation of time.

Now, there are certain things that may be fixed in a Constitution unchangeably. For example, we may fix two months as the time of residence to entitle a man to vote, as we did in the article on suffrage, and that can remain; but on a question like this, where it is every day changing, where the population and the business of the district are changing and increasing, requiring more judicial force, or perhaps in other cases less, we cannot well fix any basis of population, certainly not so low a ratio as this.

Mr. President, in looking over the present judicial districts of the State we find that they average about 65,000, and it is admitted that many of the judges now in the State have not near the amount of work that they can perform. In this amendment I propose to fix the population requiring a judge at 70,000, with the power in the Legislature where the necessities of the case require it to add more judges in districts of that population, and I think, after consulting with many gentlemen of large experience, that this is as near the true number as we can get. If gentlemen think it should be lower, or even a little higher, I am willing to accept any change that meets the views of the

Convention. There are a number of districts reported to the Convention by their delegates as having 80,000 and 100,000, and still they say their judges are able to perform the work, and if that be the fact why should we reduce it down to so low a number as is suggested here?

It is proposed by several gentlemen that we impose upon our judges the work of auditing all the accounts in the orphans' court without fees. The delegate from Butler (Mr. J. N. Purviance) has told us that there is no department of the judiciary that has been crying so much for reform as the cases of the widows and the orphans in our courts. Now, sir, is it proposed here that we may make charitable institutions of the courts of the Commonwealth; that we provide that a certain class of cases shall be adjudicated as charity to the people? I tell you, sir, that where the widows and orphans of the Commonwealth have estates they will be cared for. It is proposed to put it into the hands of a single judge for each district. It is physically impossible for any one man, even in one of our smallest counties, to look so carefully after the interests of the widows' and the orphans' estates that they will not suffer. There must be other means provided. If you reduce our judges to mere clerical work you select men that are unfit for performing the duties of a judge. I hope, Mr. President, that something will be adopted that will leave our judiciary in at least as good a condition as it is now. This we certainly cannot expect to find under the original section. I hope the amendment will be adopted. The amendment was rejected.

Mr. D. W. PATTERSON. I offer the following amendment as a substitute for the section: Strike out all after the word "section," and insert:

"The Legislature shall, when necessary, create additional judicial districts, and when such districts consist of more than one county they shall be formed of convenient contiguous counties, and shall provide for additional law judges as the business of such additional and existing judicial districts may require; but no county shall be divided in forming a district. The office of associate judge not learned in the law is abolished, except in counties not forming separate districts, and in which neither the president nor any additional law judge shall reside; but the several associate judges in office when this Constitution shall be

adopted shall serve for their unexpired terms."

I fix no basis of population or territory here, and no restraint on the Legislature, except to prevent cutting up the counties in forming judicial districts. I leave it entirely to the Legislature. But for the first time, in case it shall be adopted, we put in an enabling clause, saying "the Legislature shall." There has been no clause of that kind in the existing Constitution; and the consequence has been—and it must be admitted—that the Legislature has often refused to increase the judicial force where it was absolutely required. They were given the power, they were given the authority, but as they were not directed by the fundamental law they often refused on account of the additional expense and the probability of its not being wanted. Now, I think it well to put in a clause saying that the Legislature shall, when necessary, create additional judicial districts formed of convenient territory, whether consisting of one county or more, and shall provide for additional law judges when the business requires it.

It is manifest that if the section reported by the committee of the whole passes as it is now, it will make some seventy-seven or seventy-nine judges in the State. ["No!" "No!"] Yes, it will. We now have fifty-two or fifty-four, and if you give each county a judge it will make some seventy-five or seventy-seven judges. That increase is too great. The people will not justify it; they will not sanction it. The business of the State does not demand it.

I should not have offered this amendment if I had any evidence that this Convention would vote down the whole section now under discussion. I think with gentlemen who have spoken here, that we should leave that entirely to the Legislature. As it is now, or would be under the amendment I propose, the Legislature will see the wants and necessities from the actual business arising in the State, and where a county or counties demand more judicial force they will have the power and will supply it. It is a flexible system—the existing one—meeting all the wants and necessities of the people in regard to judicial matters, and it seems to me it has worked well in the past and we should leave it there for the future. That is all I have to say.

My amendment, I should add, is somewhat different from the original section in

this regard: While it abolishes associate lay judges, it also retains the lay judges in districts formed of more than one county, but only in those counties where a president or an additional law judge does not reside, only providing for associate lay judges in those counties where there is no law judge, thus reducing the expense as much as possible. I retain that feature.

I have expressed my views on this subject and will not delay the Convention. I think they fully understand the whole matter after so much debate.

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section.

Mr. LANDIS. I move to amend by striking out "thirty thousand," and inserting "fifty thousand."

My desire has been to have the judicial districts of the State so fixed that the population may be the basis of arranging them at about one hundred thousand population. I gave my reasons before on this floor why I was opposed to the section as it now stands. I have since discovered that there are many gentlemen of the same opinion who believe that this is a section which should not be adopted. I, therefore, offer this amendment as a compromise to those gentlemen who are in favor of fixing judicial districts by population. I feel like making an effort here and asking those who are determined that the ratio shall be reduced, to agree to come up to this amount of population. I will never consent that the judiciary of the State shall be degraded, because I conceive that to reduce the population to so low a minimum as thirty thousand will degrade it. I will never consent to aid in adopting any policy that will thus degrade it and retard the growth and development of the judiciary of the State, a policy that will tend in turn to result disastrously to the interests of the people. I therefore appeal to the professional pride of this Convention, to do that here which will prevent the fixing upon the State a policy which I conceive will be injurious and prejudicial to her interests.

I ask for the yeas and nays upon this amendment. I hope it will be seconded.

The PRESIDENT *pro tem.* Is the call for the yeas and nays seconded?

More than ten members rose.

The PRESIDENT *pro tem.* The call for the yeas and nays is seconded, and the Clerk will proceed with the roll.

Mr. BEEBE. Before that is done, I desire to say that I hope this amendment will not prevail, because there are in the State several counties of less population than fifty thousand where there is more than enough business for one judge.

Mr. TURRELL. I move to amend the amendment by striking out "fifty thousand," and inserting "forty thousand."

Mr. J. N. PURVIANCE. Is it in order to move a further amendment?

The PRESIDENT *pro tem.* Not now. There are two amendments pending.

On the question of agreeing to the amendment to the amendment, a division was called for, which resulted twenty-three in the affirmative. This being less than a majority of a quorum, the amendment to the amendment was rejected.

Mr. J. N. PURVIANCE. I now move to amend the amendment by striking out "fifty thousand" and inserting "thirty-five thousand."

Mr. LANDIS. I hope the gentleman from Butler will withdraw his amendment to the amendment and allow us to have a direct vote on the amendment. He can then offer his amendment afterward.

Mr. J. N. PURVIANCE. I will do that.

The PRESIDENT *pro tem.* The question is on the amendment. The yeas and nays have been ordered, and the Clerk will proceed with the call.

The yeas and nays were as follow, viz:

Y E A S .

Messrs. Ainey, Alricks, Biddle, Bigler, Brodhead, Bullitt, Carter, Cochran, Curtin, Darlington, Davis, Ewing, Fulton, Gibson, Hall, Hunsicker, Lamberton, Landis, Lear, Palmer, G. W., Palmer, H. W., Patterson, D. W., Reed, Andrew, Reynolds, Ross, Smith, H. G., Smith, Wm. H., Walker, Wetherill, J. M., Wetherill, Jno. Price and Wright—31.

N A Y S .

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Beebe, Black, Charles A., Boyd, Broomall, Brown, Buckalew, Carey, Clark, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Edwards, Elliott, Ellis, Finney, Funck, Gilpin, Guthrie, Hanna, Hay, Hemphill, Howard, Kaine, Lawrence, Lilly, MacConnell, M'CLean, M'Culloch, M'Murray, Mann, Mantor, Newlin, Patterson, T. H. B., Patton, Pughe, Furman, Purviance, John N., Purviance, Samuel A., Read, John R.,

Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Stewart, Turrell, Van Reed, Wherry, White, Harry and Worrell—56.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bally, (Perry,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Calvin, Campbell, Cassidy, Church, Collins, Craig, Dallas, Dodd, Dunning, Fell, Green, Harvey, Hazzard, Heverin, Horton, Knight, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Parsons, Porter, Runk, Russell, Struthers, Temple, White, David N., White, J. W. F., Woodward and Meredith, *President*—48.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. DARLINGTON. I move to amend by striking out all after the word "abolished."

The *PRESIDENT pro tem.* The Clerk will read the part moved to be stricken out.

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. DARLINGTON. I have only to remark upon this amendment that the vote of the Convention upon it will probably determine my vote upon the section. Unless we can secure the total abolition of these unlearned judges, we do not advance much in the direction of reform.

Mr. HARRY WHITE. We do.

The amendment was rejected.

Mr. C. A. BLACK. I now move to amend the section by striking out in the first line the words "each county containing thirty thousand inhabitants" and inserting the words "whenever a county shall contain thirty thousand inhabitants, it;" also by striking out the words "excepting on counties not forming separate districts" and inserting the words "except in counties which may contain less than thirty thousand inhabitants."

These are merely changes in phraseology. If the section is to be adopted at all, it should clearly provide for the counties that have the least population. This amendment is to provide for increase of population.

Mr. HARRY WHITE. I understand this is to merely perfect the section. It only changes the verbiage the little.

Mr. BIDDLE. Read it.

The CLERK read the section as proposed to be amended, as follows :

"Whenever a county shall contain thirty thousand inhabitants, it 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 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, except in counties which may contain less than thirty thousand inhabitants; but the several associate judges in office when this Constitution shall be adopted, shall serve for their unexpired terms."

Mr. CLARK. I think the first branch of the amendment is well taken, and perhaps improves the wording of the section; but the second part of it is to my mind objectionable in this: We provide in the latter part of the section that smaller counties may be attached to contiguous districts if necessity requires. Now, the small counties so attached would have associate judges whilst the larger counties or districts would not have associate judges, and the president judge might also reside in one of the smaller counties. The latter part of that amendment is open to that objection.

Mr. C. A. BLACK. I will withdraw the latter part, and allow the first part of the amendment to remain.

The amendment as modified was agreed to.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. ANDREW REED. I call for a division of the section, to end with the word "provide," in the seventh line.

The *PRESIDENT pro tem.* The first division will be read.

The CLERK read as follows :

"Whenever a county shall contain thirty thousand inhabitants it 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 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 con-

tiguous districts as the Legislature may provide."

Mr. SHARPE. On that question I call for the yeas and nays.

Mr. ANDREW REED. I second the call.

The yeas and nays were as follow, viz:

Y E A S .

Messrs. Ainey, Baer, Beebe, Brodhead, Brown, Bullitt, Carey, Clark, Corbett, Corson, Cuyler, Darlington, De France, Edwards, Elliott, Ellis, Finney, Guthrie, Hanna, Hay, Horton, Howard, Kaine, Knight, Lamberton, MacConnell, M'Clean, Mann, Mantor, Newlin, Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Read, John R., Simpson, Smith, Wm. H., Stanton, Turrell, Walker, White, Harry, Worrell and Wright—42.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Broomall, Buckalew, Carter, Cochran, Cronmiller, Curry, Curtin, Dallas, Davis, Dunning, Ewing, Fulton, Funck, Gibson, Gilpin, Hall, Hemphill, Hunsicker, Landis, Lawrence, Lear, Lilly, Littleton, M'Culloch, M'Murray, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Van Reed, Wetherill, J. M., Wetherill, Jno. Price and Wherry—52.

So the first division of the section was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bannan, Barclay, Bardaley, Bartholomew, Bowman, Calvin, Campbell, Cassidy, Church, Collins, Craig, Dodd, Fell, Green, Harvey, Hazzard, Heverin, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Parsons, Porter, Runk Russell, Struthers, Temple, White, David N., White, J. W. F., Woodward and Meredith, *President*—39.

The *PRESIDENT pro tem.* The question now is on the second division of the section.

SEVERAL DELEGATES. Let it be read.

The *CLERK* read 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. DARLINGTON. I ask for a division of the question, to end with the word "abolished."

Mr. ARMSTRONG. I trust this division of the section, however the vote may be taken, whether as a whole or in parts, may be voted down, that we may leave the entire question in the discretion of the Legislature, as we have determined to do as to president judges.

Mr. DARLINGTON. But on that subject I think there is no provision now for abolishing associate judges.

Mr. ARMSTRONG. No, sir; but it is in the power of the Legislature to abolish them where their abolition seems to be a necessity or to be expedient, and it is better to leave that discretion untrammelled with the Legislature.

Mr. HARRY WHITE. I rise to an inquiry. Do I understand the chairman of the Judiciary Committee to say that the Legislature of Pennsylvania, under the Constitution as it now is, can abolish the office of associate judge?

Mr. ARMSTRONG. I think so. If I am mistaken, will the gentleman point out the clause which prohibits it?

Mr. HARRY WHITE. My answer is this: That the office of associate judge is a constitutional office, and it is not in the power of the Legislature to abolish it. I will state furthermore that it is competent for the Legislature to require the associate judges to be men learned in the law. They have not, however, the power to abolish the office.

The *PRESIDENT pro tem.* The Chair is of opinion that the residue of the section is not divisible, because the last division would be senseless without that which precedes it.

Mr. ARMSTRONG. Gentlemen will allow me to explain, so that I may not be misapprehended on this matter. If the gentleman from Indiana will turn to the ninth section of the article, as we have proposed to adopt it, he will find that it is provided that all the judges of the courts of common pleas shall, by virtue of their office, within their district be a justice of oyer and terminer and general jail delivery. It is therefore, under the Constitution as it is adopted, a single judge. The president judge would be competent to hold the court of oyer and terminer, as well as the orphans' court and the court of quarter sessions, if our Constitution shall be adopted.

Mr. BUCKALEW. I desire on this question to call attention to the fourth section

of this article, which provides that "until otherwise directed by law the courts of common pleas shall continue as at present established, except as herein changed." That would authorize by express terms the continuance of the courts of common pleas with a president and two associate judges until by law a different regulation shall be made. Then, as we do not retain the amendment of 1850 with regard to the election of judges, there will be no clause in the Constitution that will make associate judges constitutional officers, and in my judgment their existence will be left in the discretion of the Legislature, as the gentleman from Lycoming has already explained.

Now, Mr. President, since the Convention has refused to adopt the first part of this section the latter part of course should be rejected also, for the reason that you have not made provision for locating a president judge in most of the small counties of the State. Their existence is, as the section now stands, a necessity in a large part of the interior of the State; and I beg to call the attention of members to the small expense which the public treasury incurs by the employment of this class of officers. Their pay in most of the counties of the State is but \$300 a year, making for both judges in a county an expenditure of but \$600—half the cost of a first class clerk in a bureau or department at the city of Washington. In short, the whole cost of these officers in a county is less than half the expense of the smallest sort of clerk.

Mr. BOYD. Allow me to ask the gentleman a question. Will he be good enough to state what they do that entitles them to even that much?

Mr. BUCKALEW. The gentleman wants me to go into a speech on the utility of associate judges—

Mr. BOYD. Yes, I want to know what use an associate judge of that kind is.

Mr. BUCKALEW. If the gentleman wants me to go into a speech on the general question of the utility of associate judges, I must decline his invitation. I spoke on that subject yesterday, and the whole matter is perfectly familiar to the gentlemen of the Convention. There are a vast number of things which the associate judge is required to do under the statute laws of the State. Let me add that I think the Legislature of the State could with propriety and with advantage to the public interests establish county boards, consisting of the board of county

commissioners and of the associate judges for the transaction of business that is now imperfectly managed under our existing system. I would constitute a county board in each county, of the commissioners and associate judges, to fix the tax rate upon the people every year, to have the power of appointing and removing the keeper or manager of the public prison of the county, and this would be important in counties where there are penitentiaries; to control also the appointment and removal of the superintendent of the poor house where a poor house is a matter of county administration, and to pass upon various other matters of local concern. If you have a county board of this sort established, it should perform all the duties that are discharged in the State of New York by county boards of supervisors, and in other States by similar bodies, and you would obtain all the advantages of a county board without creating new officers. You would use your associate judges in connection with your county commissioners for this purpose, and in the outcome, in my judgment, we would obtain a very great improvement in county government, in the administration of county affairs.

I confess this is one of the reasons why I desire to retain this office of associate judge in the counties of the interior. Of course, it is not a question of interest in the cities of Philadelphia and Pittsburg, communities which have a peculiar municipal organization; but in the remainder of the State I think great good would result from the creation of county boards, made up as I have described them, without additional expense upon the people.

For the present, however, I shall not go further into the question. I only allude to it in connection with this subject of rejecting the second branch of this section, which I hope will be done.

Mr. H. W. PALMER. Mr. President: The adoption of this division of the section will affect only six counties in the State, namely: Lancaster, Luzerne, Schuylkill, Berks, Lycoming and Crawford, for those are the only counties composing single judicial districts. In each of these counties, except Lycoming and Crawford, there are two law judges, and in each of them I feel free to say I believe the associate judges are neither useful nor ornamental. They cost something and are worth nothing, absolutely and utterly nothing. They bring the

administration of justice into contempt and beget a distrust of the judiciary which is more detrimental than any benefit they can possibly confer.

Mr. BEEBE. I rise to a point of order: That after the yeas and nays have been ordered upon a section, debate is out of order on a division of that section.

The PRESIDENT *pro tem*. The yeas and nays were not ordered on the section, but on the first division, which has been voted on. There is no order for the yeas and nays on this division. The gentleman from Luzerne is in order.

Mr. H. W. PALMER. Associate judges are sometimes consulted in making appointments of guardians and road-viewers, and at times when sentences are to be passed on criminals. Otherwise they are not claimed to be of use or value. Well, if the court would take the advice of the lawyers they would be as likely to get information, and of a more reliable quality. In the passing of sentences on criminals these judges are animated by their passions and prejudices instead of sound judgment. In the multitude of appointments that of late years have been put upon the judiciary which are political in their nature, the associate judges are guided by their political interests and prejudices alone. In the matter of granting licenses great abuses arise, because the associates are open to private solicitation, and for months before the license day they are belabored by every man who desires, but ought not to have, a license, and the business is fixed up so that when license day comes around the most shameless violations of law occur. Licenses are granted that ought not to be granted, and licenses are refused that ought to be granted, both in direct violation of express law.

I therefore say, because the office of associate judge brings contempt and distrust upon the administration of justice, is expensive, inconvenient, and useless, it ought to be abolished, especially in these large counties having two law judges. It affects, as I said before, only six counties in the State, and I believe that the representatives of those counties in this body are nearly unanimous in desiring the abolition of the office of associate judge. Of course there have been and are individual exceptions where associate judges have conferred honor upon the bench; but so long as the office is political and filled from the ranks of politicians unlearned in the law, the excep-

tions must of necessity be rare, and the rule as I have stated it.

The PRESIDENT *pro tem*. The question is on the last division of the section.

Mr. KAINE. I do not know whether it be in order or not to discuss the question that has been spoken to both by the gentleman from Lycoming and the gentleman from Columbia. I am satisfied, however, for myself, that unless some change is made in the amendments that have already been adopted by this Convention, the office of associate judge is now abolished, and you want nothing further upon that subject. There is no provision in the amendments that we propose for retaining that office; and if the position of some gentlemen here be correct, that where we have supplied or attempted to supply an article, it is superseded, then the office of associate judge, as I before said, is certainly abolished. The ninth section of this article, which has been referred to by the gentleman from Lycoming, provides that every judge of the court of common pleas shall by virtue of his office within his district be a justice of oyer and terminer and general jail delivery. That provides for the holding of those courts by a single judge, and nowhere in the amendments we have proposed is there any provision that the court shall consist of more than one judge.

Under the Constitution of 1790 the Governor was directly authorized to appoint not more than four, nor less than three, judges of the court of common pleas. That section was not retained in words or in form in the Constitution of 1837-38, but it is in substance where it provides that the courts of oyer and terminer shall consist of two judges. Therefore I think it makes no difference whether we vote this proposition down or not.

The PRESIDENT *pro tem*. The question is on the last division of the section.

The division was rejected.

The PRESIDENT *pro tem*. The next section will be read.

Mr. COCHRAN. I rise to what I believe is a privileged question, and that is, to submit a motion to reconsider the twenty-first section, as I intimated I should do in what I said this morning.

SEVERAL DELEGATES. Let us get through with the article first.

Mr. COCHRAN. Very well; I will defer making the motion until we get through with the article, as gentlemen seem to prefer that.

The CLERK read the next section as follows:

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. ARMSTRONG. I move to amend by adding at the end of the section these words: "And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the courts of common pleas and orphans' courts."

I call the attention of the Convention to the fact that the same provision is now embodied and has passed the Convention in the fifth section, which will be found on the third page of the printed report; but in the connection in which it stands it is open to a doubt whether it is not a limitation only upon the courts of the city of Philadelphia and Allegheny. It was intended to be a general provision as to all the courts of the State. I therefore move it at this place in order that it may be a general provision beyond all question, and if it should be adopted I shall then move to reconsider the fifth section for the purpose of striking out the same words in that section, where I think they were not properly inserted.

Mr. HANNA. I should like to ask the chairman of the committee whether this amendment is consistent with the first section of this article?

Mr. ARMSTRONG. I think so.

Mr. HANNA. That first section says that the judicial power of this Commonwealth shall be vested in certain courts, naming them, "and in such other courts as the Legislature may from time to time establish."

Mr. ARMSTRONG. This operates, then, as a limitation upon that power, and would prevent the Legislature from establishing other courts to exercise only the same jurisdiction that may be exercised by the courts of common pleas.

Mr. KAIN. I should like the gentleman to be more particular in his statement of what he intends to effect by this amendment.

Mr. ARMSTRONG. It is merely to trans- pose a provision which the Convention has already adopted, because in the place in which it now stands it is open to a possible construction that it applies only to

the courts of Philadelphia and Allegheny, whereas I believe it was the sense of the Convention to make it a general provision, applying to all the courts of common pleas in the State. It is only for the purpose of transposing the provision into a place which will free it from the objection that it is thus limited.

Mr. ELLIS. I should like to learn from the chairman of this committee what is especially sacred in the courts of common pleas and the orphans' courts that they should be guarded by this constitutional provision. All other courts are left at the discretion of the Legislature. In the first section of this article the courts to be established by this Constitution are defined, and then follow these words: "And such other courts as the Legislature may from time to time establish." Why is it that the courts of common pleas and the orphans' court shall be thus hedged around, so that the Legislature shall not interfere with them? Both those courts exercise jurisdiction in matters of mere dollars and cents; whereas the higher courts that deal with a man's life and personal liberty are left entirely at the discretion of the Legislature. The Legislature may alter and change from time to time at its pleasure those courts which deal with the lives of the citizens of Pennsylvania; and yet the chairman of the Judiciary Committee proposes that the courts which deal merely with dollars and cents shall be hedged around with constitutional provisions that the Legislature shall not alter or change.

I am impelled to make these remarks, Mr. President, from facts that have transpired, from landmarks in the history of the State that now exist, and which ought to teach us some wisdom in relation to this subject. In the county in which I reside but do not especially represent, (and I have alluded to it several times on this floor,) there exists a legislative court, a court of most extraordinary powers. In that county the political majority is largely on one side, and under the power to elect judges we always have, and perhaps always will, elect judges of one political persuasion. But the minority in the county, being dissatisfied with the administration of justice in that county in relation to criminal matters, determined that there should be a judge placed in our county whose political sentiments were in antagonism with those of the majority in that county. In order to do that a court was created nominally for three

counties, actually for but one. Some six years ago the counties of Dauphin, Lebanon and Schuylkill were made a district, and a court was created for the purpose of trying criminals in the county of Schuylkill. That court had a nominal jurisdiction in Dauphin and Lebanon, but a virtual, actual, continuous and exclusive jurisdiction in the county of Schuylkill upon criminal matters. Jurisdiction was given in the counties of Lebanon and Dauphin for the mere purpose of giving the voters of those counties the right of placing a judge in the county of Schuylkill. That judge has sat for six years administering criminal justice in the county of Schuylkill, with a jurisdiction in the counties of Dauphin and Lebanon, and has never tried a single case in the counties of Dauphin and Lebanon. He was called upon by the district attorney of the county of Lebanon to try one case there, but it resulted in the quashing of the indictment, and that has been the entire extent of the exercise of his jurisdiction in those counties.

I do not say this with any view of making any reflection upon the eminent gentleman who sits as the judge in that court. For him I have the highest respect, and so far as that court itself and the administration of justice in that county are concerned I have not a word to say against them. But, sir, it is an alarming example, which hereafter, in times of high political excitement, may be followed in every county in this State. What would the people of Lancaster think if Schuylkill and Berks were to elect their judges? What would any county in the State think if adjoining counties had the power to elect their judges? What does it mean? What did it mean in Schuylkill when two counties were attached to Schuylkill in order to elect a judge? It meant at the time the court was created just one thing: That unfair play should be administered to one set of citizens in that county, and different law and different rulings to others. That that has not been the operation of the law and of this court has been owing to the eminent character of the man who was elected. But, on the other hand, suppose the people should, as they have the power to do, and as in times of high political excitement it is very probable they would do, elect the veriest political demagogue in the district, what is the result? You drag down the high judicial ermine through the lowest cess-pools of politics,

and you everywhere plunge the State into disgrace.

Now, sir, I have no hostility to the proposition of the gentleman from Lycoming, if he will make it broad enough. I believe there ought not to exist in this Commonwealth courts of record other than constitutional courts. If we had adhered to the very wise report of the chairman of the Committee on the Judiciary, so far as the first section of this article is concerned, we would have done well; but now, since we have departed from that and permitted the Legislature to establish such other courts as they please from time to time, I am decidedly against establishing a constitutional barrier to protect merely those courts which deal with the property and not with the lives and personal liberties of the citizens of Pennsylvania. I had hoped that the first section would be amended so as to meet the gentleman's proposition, but a motion was made to strike out these words, "and in such other courts as the Legislature may from time to time establish," and it was lost. I, therefore, am decidedly opposed to any proposition that looks towards making such an outrageous distinction in favor of dollars and cents, and leaving those courts which deal with life and liberty at the will and pleasure of the Legislature.

And, sir, what is that Legislature? It may be a bare majority of one in each branch, and then the majority of that majority makes the law. This court to which I have referred was made under the dictation of a caucus of one political party. It was forced down the throats of a large minority of the political majority in the Legislature under that infamous caucus system which has disgraced our State and others. Your laws in relation to the courts will be made for you, not by the Legislature, but by the majority of the majority, by the political caucus, which may be a very great minority of the Legislature; and in times of high political excitement, as I said before, you may have the entire judiciary of the State changed.

The PRESIDENT *pro tem*. The delegate's time has expired.

MR. ARMSTRONG. It appears to me that the gentleman is under an entire misapprehension as to the effect of this amendment. It is to prevent the very thing which he argues against. It is to be borne in mind that at the time this clause was introduced in the fifth section

it was by an amendment offered by the gentleman's colleague from Schuylkill, (Mr. Bartholomew,) and it was adopted with a view to prevent the establishment of any courts which would exercise the same powers that the general courts of common pleas in the State exercise; and as it has already been passed and is in the Constitution, I could not imagine that a mere proposition to transpose it would create any debate whatever. I again say to the Convention that it changes nothing, it affects nothing, except to remove a doubt as to whether or not in the location in which it stands it is not trammelled by the possibility of being limited to the cities of Philadelphia and Pittsburg. If there is to be any debate about the amendment I will withdraw it, because it is not worth the discussion. It is already in the Constitution, adopted after full debate and fully understood. I will not stop to discuss it further, and if debate is to continue upon it I shall withdraw it.

Mr. CUYLER. I hope the amendment will not prevail.

Mr. ARMSTRONG. I withdraw the amendment.

The PRESIDENT *pro tem*. The amendment is withdrawn. The question is on the section.

Mr. KANE. I think this is a very important section and should not be passed over hastily; neither do I think it should be adopted by the Convention. It is entirely new. It is certainly a novel thing to put into a Constitution:

"All laws relating to courts shall be general and of uniform operation—"

I suppose that is already provided for in the article on legislation—

—"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, judgments, and decisions of such courts shall be uniform."

Now, I should like to understand what is meant by the force and effect of decisions of the several courts of common pleas of this Commonwealth being "uniform?" A judge in one part of the State decides a question one way, as he may construe an act of Assembly or as he may construe a decision of the Supreme Court upon that particular question under consideration, while a judge in another part of the State may decide the same question in a different manner. Now, how are you going, by a constitutional provision,

to provide that the judges of the several courts of common pleas shall make their decisions upon particular questions uniform throughout the Commonwealth? To my mind the thing is utterly impossible and is absurd. I have no objection to the rules of court being uniform all over the State, but I have objection to providing in the Constitution that the decisions of the courts shall be uniform.

Mr. STEWART. Only in their legal effect.

Mr. KANE. Who is to be the judge of that? I propose to amend the section by striking out in the fourth line after the word "judgments" the words "and decisions," and inserting the word "and" before "judgments," so as to read:

"And the force and effect of the process and judgments of such courts shall be uniform."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Fayette.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is on the section as amended.

Mr. BUCKALEW. I should like to inquire of the chairman of the committee—I have not paid attention to the section—whether this requires the rules of court and practice in every county of the State to be exactly alike.

Mr. ARMSTRONG. It does not, as I conceive, and with that view I propose to offer a section to follow this which will provide for uniformity of practice in the State. The section which I will offer immediately following this will provide for a uniform practice throughout the State under the rules of court.

Mr. KANE. Why not offer that in place of this?

Mr. ARMSTRONG. This is right.

Mr. BUCKALEW. I would not care to make it imperative that all the rules of court in relation to practice shall be exactly the same in the interior as they are in Philadelphia and Pittsburg. If the gentleman does not encounter that difficulty I shall have no objection to it.

Mr. ARMSTRONG. We do not encounter that, because we have made provision for it.

The CHAIR put the question and declared that the ayes appeared to prevail, and a division was called for.

Mr. ARMSTRONG. If there is any danger of this section not passing, I want to be heard upon it. ["Go on."] In the first place, this section has the advantage

of experience in the State of Illinois, and has been operating there since the adoption of their amended Constitution with eminent success and value, and it is embodied in this report as taken from the Constitution of the State of Illinois. Now, why should it not be so? We simply provide that all laws relating to courts shall be general. It is in the direct line of the limitation which we have already adopted as to other important matters in the article of legislation.

Why should it be left open to the Legislature to make a law which shall be applicable to the courts of one district and not applicable to the courts of another? I say there is eminent propriety and commanding necessity for so limiting the Legislature that they shall not impose laws which shall be applicable to and binding upon one court and shall not be applicable to and binding upon all other courts of the Commonwealth. If there be anything in the whole range of legislation in which there is necessity for holding the Legislature to the line of uniformity, it is in reference to the laws which affect the courts.

Now, this section is not intended to regulate practice, so far as it pertains to the mere rules of court. That I propose to cover by another section which I shall offer, in which the necessities of large populations are provided for; which, when it comes up, will be properly considered upon its merits. But I can conceive of no sufficient reason whatever that shall justify us in refusing to say that the Legislature shall not make laws which shall be operative upon one court of the State and not upon all alike. I think the section ought to be adopted.

Mr. CUYLER. I cannot agree with the gentleman from Lycoming. I cannot see that the courts of a great city like Philadelphia will be surrounded by the same circumstances, be situated in the same way, with courts of the sparsely settled parts of the State. I cannot see that there may not, and indeed I am well convinced that there will be many occasions where special laws affecting the operation and action of courts of one locality may be requisite which would be wholly inappropriate in another. I can very well understand, every gentleman can understand, that the *venue* that called a jury to a court in Philadelphia county will require the summoning of a larger number of jurors than that which shall call jurors to some other county in the interior of

the State; and yet if the section prevails and the laws that relate to the courts are to be uniform, I suppose the provision must be that the same number of jurors shall be called in an interior court that would be called here.

I might illustrate it in many other ways. Just so long as the circumstances of one part of the State may vary, and do vary, and largely vary from those of other parts of the State, just so long will the application of a law that shall be absolutely uniform operate with severity upon one or the other portion of the State. I am in favor of leaving that to the wisdom of the Legislature and letting them determine whether circumstances exist which should apply a system of legislation to one district which might be wholly inapplicable to another.

Therefore, unwilling to bind the Legislature in this respect, I hope that this section may be voted down.

Mr. ARMSTRONG. I desire to call the attention of the Convention to the fact that no such difficulties as the gentleman suggests could arise under this section. It only requires that the law shall be uniform, and that law may with propriety regulate the number of jurors in large or small districts; but it shall be a general law, and in that law provisions shall be made which shall adapt it to the exigencies of different counties, but it shall be general and shall be of uniform operation. It means that the law applied to the State at large, within the terms of that law shall not be different in one place from another; but it does not limit the Legislature in making a general law to provide for all exigencies which may be necessary, but it must be made by a general law and shall not be made by a particular and special law which shall apply to Philadelphia and shall not apply to Allegheny, or shall apply to that city and not to the other counties of the State. The section limits it to laws relating to the courts.

In our legislative article we have required that the Legislature shall legislate by general law on a great variety of subjects. This is a limitation upon the wide and unreasonable discretion of the Legislature to prevent that kind of special legislation which obtains in the Legislature—laws affecting particular cases—which is pernicious legislation at all times, and ought to be prohibited.

Mr. DALLAS. Mr. President. The gentleman has not yet replied to the objections well presented by my colleague

from Philadelphia, (Mr. Cuyler,) for there is a portion of this section still remaining to which his remarks can have no application. In the latter half of this section it provides in this way: "And practice of the courts of the same class or grade, so far as regulated by law, * * shall be uniform." In other words, we shall have in the city of Philadelphia and in the county of Allegheny precisely the same practice for the regulation of our larger courts that they have throughout the rest of the Commonwealth. That, sir, is certainly open to the objection presented by the gentleman from Philadelphia, and which has not been answered by the gentleman from Lycoming.

MR. ARMSTRONG. I will ask the Clerk to read for information the following, which I will offer as a new section when this shall be passed.

The CLERK read as follows:

"It shall be the duty of the Supreme Court, as soon as practicable, and within one year after this Constitution shall take effect, and from time to time thereafter as may be necessary, to provide rules and regulations for a general system of practice in all the courts of record in 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 and counties exceeding one hundred thousand inhabitants, and special rules may be added thereto by the presiding judge of any judicial district, with the consent and approval of the Supreme Court."

MR. DARLINGTON. Mr. President—

The PRESIDENT *pro tem*. The hour of one having arrived the Convention will take a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

The PRESIDENT *pro tem*. When the Convention adjourned the question under consideration was the twenty-fifth section of the article on the judiciary. It will be read.

The CLERK read as follows:

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, judgments and decisions of such courts shall be uniform.

MR. DARLINGTON. I hope this section will not be agreed to. I think it will be found exceedingly inconvenient when we recollect that throughout the State there are a great many varying systems of practice, all of which are appropriate to and agreeable to the parties who have adopted them. In Philadelphia, for instance—and I presume this is intended to make the practice of universal application—there are now monthly return days for writs. They have that plan in Delaware and they have it in Allegheny, but Delaware differs from Philadelphia and Allegheny in this, that writs are returnable on the fourth Monday of the month, while in the others they are returnable on the first Monday of the month. In Berks it is the second Monday of the month. Thus we find in the different counties writs may be returnable exactly as it suits the convenience of the bar and the community there. In almost all other parts of the State we have a general law, passed in 1832, which contains three different return days for writs; first, the first day of the term; next, the next day preceding the last day of the term; and the third, if the writ shall be issued before ten days anterior to the commencement of the term and shall not be served until within ten days, then the defendant is to appear in ten days after the writ shall be served; so that under the general law there are the three return days, somewhat inconvenient, I admit, and cumbersome in practice.

In our county of Chester, in 1862, we had a special law passed, making the return day of all process for the commencement of action in ten days after the process was served, adopting one of those in the general law and abolishing all others as to that county, so that a writ issued there for the commencement of an action is in all cases made returnable in ten days after its service, and it is so stated on the face of the writ, so that the defendant has clear notice that he is to appear to the writ in ten days after it is served. That we find exceedingly convenient. We have practiced upon it for the last ten years with entire satisfaction to every member of the bar, the court, and the whole community. At the end of ten days, having filed our claim, if the action be for a money claim, or a statement of the cause of action, five days before the return day, if no affidavit of defence can

be made at the return day, we take judgment and issue execution. Thus it is that one-half, and it may be more than one-half, of all the cases for collections end with the ten days' judgment and execution, and we never hear of them in court; and this probably is one reason why our business is closely worked up.

Now, this satisfies our community. It might not satisfy the community elsewhere. We should not like to change it. Why, then, I ask, should we be compelled to change it? It suits our whole people better than anything else we have ever had; and if in Franklin or in Fayette or in Greene they might think other days more convenient for them, let them have them. There is no necessity for our having the same days or the same number of days of service in one county as another. There is no necessity for the uniformity which the section proposes to make.

"All laws relating to courts shall be general and of uniform operation."

It is all well enough to prohibit special legislation when you can, such special legislation as leads to mischief, as leads to bribery of members of the Legislature and everything of that kind. Do away with special laws; but these are not the things that anybody pays to get done; they are only granted by the Legislature when the people want them done, and it requires no corruption to get them done.

"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, &c., shall be uniform."

Now, it would be highly inconvenient to the city of Philadelphia, I apprehend, where thousands of suits are brought every year, to have the same practice and rules of proceeding and the same return days, and such uniformity as that, which would be proper in other counties of the State. Certainly it would be very inconvenient for any county to give up that to which they are accustomed and which is most satisfactory to them, for the sake of uniformity. Can any one give me a reason why the rules of practice of two different courts should be the same?

My friend from Montgomery (Mr. Boyd) suggests that when he goes into another county to practice, it is inconvenient for him to learn new rules. When he commenced to practice in his own county he had to submit to the inconvenience of learning the rules there, and

they do not vary so much as to make it inconvenient for him to acquire them. He will always find when he comes to Chester county a willing friend to tell him all about them. [Laughter.]

Mr. HANNA. But he does not want to go there. [Laughter.]

Mr. DARLINGTON. We have no objection to his coming. When I go to Montgomery county I think I shall know the rules there sufficiently to keep within them. No gentleman has any difficulty of that kind. It has been my fortune to practice a little in several counties in the eastern part of the State, and I have always found gentlemen of the profession so courteous and kind and clever that I have never had any difficulty in getting along.

Mr. D. W. PATTERSON. I move to amend the section by striking out the words "proceedings and practice," in the second and third lines, and inserting the word "and" between the words "jurisdiction" and "powers."

I merely wish to say that this will provide for any necessary variation in practice or proceedings where it may be entirely necessary. I have spoken to the chairman of the committee and believe he is perfectly willing that these words should be stricken out, because it might be necessary that the practice and proceedings in some courts should vary from some others.

Mr. ARMSTRONG. I think the amendment suggested by the gentleman from Lancaster judicious, and I should be glad to have it adopted. I do not feel like sitting down without thanking the gentleman from Chester (Mr. Darlington) for so ably arguing in favor of this section. He argues very warmly in its favor, but says he is not for it. It occurs to me that if there be in his county a practice of such exceeding advantage as that stated by him, there is no reason why we should not have it all over the State. When I come to think over the various points of practice and points of law that make this section necessary, it is easy to indicate them, as in Allegheny county they have a special law which is different from the rest of the State as to the mode of collecting mortgages, I understand, under a special act recently passed. In Chester county they have one rule of proceeding and in other counties different rules. I could go over and mention numerous counties; but it is not necessary to delay the Convention with that. It is enough

to know that one of the greatest defects in the judicial system of Pennsylvania has been this want of uniformity. No lawyer is safe in advising on a point of law outside of his own county. There are special laws which no lawyer beyond the district can follow and which are not understood beyond the limits of the county or district to which they apply. This section, if adopted, would not apply to laws as they at present exist, but only as to future legislation, and with the amendment suggested by the gentleman from Lancaster I think it a section of very great importance. It will unify the laws respecting the courts. It will cut up that pernicious system of having a stay law in one place different from that which exists in another. It will cut up the practice of having the mode of collection of debts and mortgages in one county different from another, and will compel in all future legislation a uniformity of law as relates to courts of the same degree.

Mr. CORBETT. I should like to ask the chairman of the Judiciary Committee why keep in the word "practice," when it is provided in section nine of the article on legislation, line twenty-seven, (and probably it supplies another portion of this article also,) that the Legislature is expressly prohibited from passing special acts regulating the practice and jurisdiction of courts.

Mr. D. W. PATTERSON. What about the rules of practice?

Mr. CORBETT. That section prevents special legislation "regulating the practice and jurisdiction or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other judicial officers, or providing for changing the methods for the collection of debts, or enforcing judgments or prescribing the effects of judicial sales of real estate.

Mr. ARMSTRONG. If it were entirely clear that the section referred to by the gentleman would cover the ground of this there would be no necessity for it. It covers the practice so far as it is regulated by law, but it does not cover the other points, I think that it does not cover the case, and that this section, which is in the same line of thought and of precaution which is taken in the section we have already adopted relating to legislation, is proper and will be wise.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lancaster (Mr. D. W. Patterson.)

The amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. ARMSTRONG. I call for the yeas and nays upon it.

Mr. STEWART. I second the call.

Mr. ARMSTRONG. I call for the reading of the section as amended, upon which the yeas and nays are to be taken.

The PRESIDENT *pro tem*. It will be read.

The CLERK read as follows:

SECTION 25. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform.

The yeas and nays were taken on the adoption of the section with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Beebe, Biddle, Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Buckalew, Cochran, Corson, Cronmiller, Cuyler, Dunning, Elliott, Ellis, Ewing, Finney, Fulton, Funck, Gilpin, Guthrie, Hall, Hay, Horton, Kaine, Lawrence, Lilly, MacConnell, McClean, McCulloch, M'Murray, Mann, Mantor, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pugh, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry and Wright—62.

NAYS.

Messrs. Alney, Baker, Corbett, Dallas, Darlington, Davis, Edwards, Gibson, Hanna, Hemphill, Heverin, Hunsicker, Landis, Ross, Smith, Henry W., Temple and Worrell—17.

So the section was agreed to.

ABSENT. Messrs. Addicks, Andrews, Baily, (Perky,) Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Bullitt, Calvin, Campbell, Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Curry, Curtin, De France, Dodd, Fell, Green, Harvey, Hazzard, Howard,

Knight, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Niles, Porter, Read, John R., Reynolds, Rooke, Runk, Russell, Smith, H. G., Struthers, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—54.

MR. ARMSTRONG. I offer the following as a new section:

"SECTION —. It shall be the duty of the Supreme Court, as soon as practicable and within one year after this Constitution shall take effect, and from time to time thereafter as may be necessary, to provide rules and regulations for a general system of practice in all the courts of record of the State, which shall be uniform in all courts of the same class and grade, and shall not be changed except by the Supreme Court: *Provided*, That special rules may be provided for cities and counties 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."

As I remarked a few moments ago, I believe one of the great complaints of the judicial system of Pennsylvania has been its want of uniformity, and in nothing has this lack been more manifest than in the varied practice that prevails throughout the State. It will readily occur to any gentleman, when thinking on this subject, that it would not be wise nor indeed practicable to bring all cities and counties of the State under the same general practice. Large cities and counties having a concentrated population evidently require some rules of practice which would be inapplicable to the State at large. This necessity is fully provided for in the section proposed. Wherever a uniformity of practice has prevailed, it has been with marked good effect. The Supreme Court have prescribed rules which are in force throughout the State in all that appertains to their appellate jurisdiction; they have also established uniform rules in all that pertains to the equity jurisdiction; and in both instances the advantage is very marked and clear.

In the district formerly presided over by the distinguished Chief Justice Black, now a member of our body, when he went upon the bench, they had very insufficient rules. He established a system which has prevailed from that day to this. But many of the adjoining counties have

in vain attempted to procure the same rules or modifications of the same rules as applied to them. The rules of practice vary so much that lawyers going from one district to another are wholly at a loss to know the rules by which they must regulate their practice at a special court.

It was stated this morning in discussion upon a kindred topic that the judges called in special cases to hold special courts are greatly at a loss to know what the practice is in the district to which they are called. So also it has been frequently the case that the judges of the Supreme Court themselves have been under the necessity of inquiring of practitioners from various counties what the rules of practice in particular cases may be; and yet the rules of practice become rules of property; they become in a large degree the foundation of vested rights, and there is every necessity for having them uniform that can prevail as to laws.

It would not do to provide for a uniform practice by law because, that would not be sufficiently flexible; but under this provision, in which it is made the duty of the Supreme Court to provide a uniform system of practice, it is at all times open to and subject to change or revision by them as new necessities may arise.

It is said that the Supreme Court shall indicate or designate these rules. It might be wise to say that the court of common pleas might indicate them; but the body is too large, and the Supreme Court, without any sort of doubt, would consult the judges of all the districts until a system should be devised which would be uniform at the same time that it would give to every county the advantage of whatever rule had proved itself to be valuable in any district of the State. It provides also for changes so far as may be necessary, but it prevents changes except with the concurrence of the Supreme Court or with their approval, in order that the rules may not be liable to unreasonable and frequent change.

I have thus indicated what I believe to be the necessity for this section. I regard it as valuable and of great advantage. It would give uniformity to practice, it would enable attorneys to practice out of their own immediate district or county with greater facility and advantage; it would aid in the administration of justice, and I can see no reasonable objection against it, because under the proviso special rules may be adopted as applied to

large cities, which would not be applicable to the smaller populations of the State.

I trust that the section will commend itself to the approval of the Convention.

Mr. CORBETT. Mr. President: I hope this section will not prevail. If there is a benefit in a uniform system of rules, it ought to exist throughout the whole State; but it appears that there is to be an unbending system of rules to be applied to all the State except cities of over one hundred thousand inhabitants.

Mr. ARMSTRONG. No; the gentleman misapprehends. It is equally unbending as to all the counties, but special rules may be made in large populations where special necessities require.

Mr. CORBETT. Is that not unbending now except for cities of large populations, and there it is bending or flexible. There there can be a special rule made or a special system of rules. If there be any benefit in a general uniform system of rules it ought to exist over all the State, and there ought not to be a special exception here, as has been made in other cases, with reference to cities.

The truth is that the State of Pennsylvania has been composed of the city of Philadelphia and the county of Allegheny, and in every instance there is to be some exception in their favor. Now, if the city of Philadelphia requires special rules, or if the city of Pittsburgh or Allegheny does, I ask why the country districts do not?

Mr. ARMSTRONG. The gentleman will pardon me once more. It is also provided by the last clause "and special rules" the very same language "may be added thereto by the presiding judge of any judicial district."

Mr. CORBETT. "With the consent of the Supreme Court."

Mr. ARMSTRONG. The same as to the cities; it applies to both of them and in the same terms.

Mr. CORBETT. Applies to both what?

Mr. ARMSTRONG. Both the cities and the country.

Mr. CORBETT. Without respect to inhabitants?

Mr. ARMSTRONG. Yes, sir.

Mr. CORBETT. Then I ask why make it a provision of the Constitution? You only make it a little more difficult to change the rule. You will soon not have a uniform system of rules extending over the State, and I do not see the benefit of it. Why not leave every district to make

its own rules? Why not leave it to the district to adopt a system such as the exigencies of the practice require? You propose to insert in the Constitution, not a statute, but a section that means nothing. It provides that the president judge may change the rules with the consent of the Supreme Court, and under this very clause you will soon have as many different systems of rules in the State as you have now. Why insert it? If this change is to be allowed, I can see no benefit whatever that will arise from this section.

Mr. S. A. PURVIANCE. In addition to what has been said by the chairman of the Judiciary Committee, I rise to add my testimony to what I believe to be a very valuable proposition. It is a fact notorious that the Supreme Court have prescribed rules for the government of cases in equity. Those rules, I believe, every member of the bar, from one end of the State to the other, agrees are most valuable. Now, sir, this amendment is nothing more, as I understand it, than authorizing the establishment of rules by the Supreme Court to be made applicable to proceedings in law. I hold that that is absolutely necessary, and I put it to every member of the bar in the Convention whether he cannot occasionally turn it to advantage. Suppose, for instance, a client belonging to Philadelphia sued in the county of Erie; that client cannot remain there; he must come right home upon urgent business. He comes, naturally, to the office of his own attorney and submits the writ served upon him and makes a statement of his case; but what can that attorney say in reply? He has to say, "I am not familiar with the rules of the courts in Erie county; I can do you no service; you must go back at once to where you were sued." On the other hand, if this proposition is incorporated in the Constitution, we will understand the rules of practice in every county in the Commonwealth, and we can, in our offices, sit down and prepare the preliminary papers necessary in every case, just as well as though we were to send our client to the county in which he was sued. I therefore hope that this section will be adopted.

Mr. CORBETT. Allow me to ask the gentleman a question. Suppose that rule has been changed under this latter clause with reference to Erie county, how can he tell then?

Mr. S. A. PURVIANCE. I do not think that the change will take place unless it

should be some additional matter not affecting the general rule, and I presume that is what is covered by allowing a court to make special rules. As my colleague on the committee (Mr. Armstrong) suggests, the change must be acted upon by the Supreme Court, and of course thus be notified to the whole bar.

Mr. KAINE. I desire to say a single word in commendation of this provision. You know very well, sir, as every lawyer in this Convention knows, that the books of reports are full of discussions and remarks of the Supreme Court upon the subject of the rules of the different districts of the State. The Supreme Court have decided over and over again that each court must be the judge of its own rules. One district has a rule on a subject of one kind, while another district on the same subject has a different rule, and therefore it leads to confusion. The judges of the Supreme Court, by virtue of an act of Assembly a few years ago, established a set of rules in equity for the whole State, so that the attorneys in Philadelphia have to practice in the same way in equity that they do in the city of Pittsburg. Having this kind of rules established by the Supreme Court, I do not see why we should not have the same kind of rules established by the Supreme Court for the several courts of common pleas of the Commonwealth.

The PRESIDENT *pro tem*. The question is upon the amendment.

The amendment was agreed to.

Mr. PATTON. I move to amend by adding the following new section at the end of the article :

"SECTION —. All advertisements and legal notices emanating from any court or public officer, required by law to be published in any newspaper of any county of this Commonwealth, shall hereafter be published by the proper officers in the two newspapers, if so many be issued, of such county having the largest circulation; the rates for such publication of advertisements to be fixed by law."

Mr. President, as this section is shorn of those objectionable features which defeated the one I offered yesterday, looking towards the same object, I hope this will meet the approval of the Convention and be engrafted upon the article under consideration. This section only contemplates an enlarged publicity of legal matter emanating from the courts and public offices, and that the Legislature shall regulate the price thereof.

As the section is in the interest of all the people, I hope the friends of reform will give it their cordial support. The argument I made yesterday, and the reasons assigned for its adoption, are no doubt fresh in the minds of the members, and I will not add anything more at this time.

Mr. BAER. I move to amend the amendment by adding the following proviso :

" *Provided*, That said papers are not published in the interest of the same political party."

I offer this because the amendment of the gentleman from Bradford simply creates an additional expense to the State without meeting the difficulty. The two papers having the largest circulation in a county or city may be published by the same political party and taken by the same readers. I am in favor of having intelligence disseminated among the greater number of the people, and if there is to be any provision at all for disseminating information to a larger number, it must be by causing it to be published in papers of different political sentiments.

Mr. LITTLETON. I desire to further amend, if it is in order.

The PRESIDENT *pro tem*. There is an amendment to an amendment pending.

Mr. COCHRAN. I regret that the gentleman from Somerset felt called on to offer this amendment to the section, because it was bringing it directly to the point which we reached yesterday and which was the objectionable point to the minds of many gentlemen. Now I am not at all squeamish about the recognition of a fact so notorious as the existence of political parties, and I have no objection even to recognize that fact in the Constitution. But, sir, it seems to be thought indecorous, I believe, here to recognize it in that connection, and, therefore, I was in hopes that the section offered by the gentleman from Bradford would be acted upon without any such objectionable condition being attached to it.

Mr. President, it has been my lot the greater part of my life to be connected in some way or other, loosely or closely, with the political press of the country, not with the great daily organs of the city, but the small press of the country, and I have had a good deal of experience with regard to this matter of publishing these notices, and I know that throughout the country it is generally a matter of favoritism. The object sought after by those

who have had the control of them has been rather to compensate pets and to accommodate them than to give the information to the public, which is the real design intended in the publication of such notices.

I think that there is nothing wrong certainly in this amendment of the gentleman from Bradford. It will work justice. It is useless to say, Mr. President, as I apprehend, that it is entirely within the control of the Legislature. Now, that may be so, and the Legislature may pass such a rule as this, but it never has done it, and the probability is that for very obvious considerations it never will do it. In some counties, which are exceptions to the general rule, a provision of this kind has been adopted by consent, and I have never heard any complaint arising out of it. Now, although political parties are not recognized in the proposition as offered by the gentleman from Bradford, yet practically under the terms of this amendment citizens of different political sentiments will receive the information which is designed to be conveyed, and if there is any value in these notices at all, any value in this publication, it can only be fully realized by giving a reasonable opportunity to the entire community to have information and notice on the subject. Now, I think under these considerations that it would be right to adopt the section offered by the delegate from Bradford.

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 delegate from Bradford (Mr. Patton.)

Mr. H. W. PALMER. I move to strike out the words, "emanating from any court or public officer," and I think it will meet the views of the mover of the section and improve the phraseology. I do not like the words. With these words stricken out I am in favor of the section. It is eminently fair that the public advertisements should reach the people to be affected, and this is done by requiring those advertisements to be put in papers having the largest circulation. I have known cases where legal advertisements were put into little seven-by-nine papers having a circulation of one hundred to one hundred and fifty, totally subversive of the purpose for which the advertising was done. When the property of

a poor man is advertised to be sold at sheriff's sale, the advertisement of it is stuck into a German newspaper having a couple of hundred circulation, and he pays his money for nothing. It might as well be put up behind a barn as put there.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Bradford.

Mr. CORBETT and Mr. PATTON called for the yeas and nays.

Mr. ARMSTRONG. I will just call the attention of the Convention to one fact? It becomes of course, if adopted, a constitutional provision—

The PRESIDENT, *pro tem*. The yeas and nays have been ordered upon the amendment.

Mr. ARMSTRONG. I rise to explain for a moment, because, as the yeas and nays have been called for, I want to give the reason why I shall vote against the proposition. It is simply this: If a mistake should occur upon a question as to which is the paper of the largest circulation, it might vitiate the entire proceeding. It is dangerous for that and a great many other reasons.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Achenbach, Bailey, (Huntingdon,) Brodhead, Buckalew, Clark, Cochran, Cronmiller, De France, Dunning, Elliott, Ellis, Finney, Fulton, Funck, Gilpin, Guthrie, Hemphill, Kaine, Lambertson, Landis, Lilly, MacConnell, M'Murray, Palmer, G. W., Palmer, H. W., Patton, Purviance, Samuel A., Simpson, Smith, Wm. H., Stanton, Temple, Turrell and Wherry—33.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baer, Barclay, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Broomall, Bullitt, Corbett, Corson, Curtin, Cuyler, Dallas, Darlington, Davis, Edwards, Ewing, Gibson, Hall, Hanna, Hay, Heverin, Howard, Hunsicker, Knight, Lear, Littleton, M'Clellan, M'Culloch, Mann, Mantor, Newlin, Patterson, T. H. B., Purviance, John N., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, David N.,

White, J. W. F., Worrell and Wright—55.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Calvin, Campbell, Carey, Carter, Cassidy, Church, Collins, Craig, Curry, Dodd, Fell, Green, Harvey, Hazzard, Horton, Lawrence, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Parsons, Patterson, D. W. Porter, Pughe, Purman, Runk, Russell, Struthers, White, Harry, Woodward and Meredith, *President*—45.

MR. CUYLER. I ask leave to propose a new section, which I will read, and then I shall desire to state the reason why I think it ought to pass, stating that it is introductory also to another section which I shall propose. The amendment I now offer is:

"SECTION.— There shall be established a court in the city of Philadelphia, to be called "the Supreme Court *nisi prius*," having two judges, elected by all the qualified voters of the State, and holding office for fifteen years; but in the election of said judges where more than one is to be chosen each elector shall vote for only one person. They shall exercise the jurisdiction now possessed by the court of *nisi prius*, and in addition shall have jurisdiction of all appeals from the settlement of accounts by the Auditor General of the State, and original jurisdiction in all proceedings either in law or equity throughout the Commonwealth in which corporations, other than municipal, are defendants. They shall also have jurisdiction without further appeal of all writs of error and appeals from courts of common pleas, in which a sum less than one hundred dollars is involved; and in exercising this jurisdiction the State shall be divided by the Legislature into six convenient districts, in each of which an appellate court shall be annually held, and the several president judges of courts of common pleas whose districts are included shall be members of said court in such district."

I desire to state briefly the reasons why I think this section ought to pass. We need in the city of Philadelphia a court removed from local influences. The aggregated wealth and the aggregated population of the great city, developing individual and corporate interests and powers in such a manner as may, perhaps, be dangerous to the independence of the courts,

makes it necessary that in the city of Philadelphia there should be a tribunal which is removed from local influences. That tribunal we have hitherto enjoyed in the court of *nisi prius*, which has been a greatly serviceable court and one without which we really cannot do. Such a court is also necessary for the dispatch of the immense mass of business which accumulates in this county. The district court for the city and county of Philadelphia, in which most of the issues are tried, has to-day more than one thousand six hundred cases upon its lists awaiting trial. Of course the process of disposing of so great a mass of cases must be slow; and if the jurisdiction of the court of *nisi prius*, which has generally been confined of late years to jury trials of an important character, the heavier causes of jury trials and equity business, is to be cast upon the district court in addition to that which it already has, with its vast accumulation of cases undisposed of, now upwards of one thousand six hundred, the delay of justice in this county must come to be something fearful.

I do not understand that any gentlemen in the Convention really doubt the existence of the necessity to which I have alluded; but there has been an intense and persistent determination on the part of the Convention that the judges of the Supreme Court shall not be taken from the duties to which they have hitherto been usually confined and to which it is proposed expressly to confine them by the terms of the new Constitution—that the judges of the Supreme Court shall not be taken away from the exercise of their appellate jurisdiction to hold the court of *nisi prius*.

The section I propose gets rid of that difficulty. It does not give to the city of Philadelphia an additional tribunal, but it continues to it in substance the same tribunal it had before, and by providing for it judges who are especially devoted to the duties of that court it gives us a court during the whole year through, instead of during four or five months of the year, at most, and then interrupted by the business of the court in banc, as has been the case in previous time. It gives us then this tribunal without interfering in the slightest degree with that which is the persistent feeling of this Convention that such a tribunal if it exists shall not take away the judges of the Supreme Court for the purpose of the transaction of its business. It gives us a tribunal

presided over by a judge removed from local influences and elected by the qualified voters of the whole Commonwealth. There is propriety that the judge should be thus elected, not only in view of the reason that I have stated, but also in view of the character of the jurisdiction which this section provides for, because appeals from the Auditor General's office, which now consume much of the time of the court of common pleas in Dauphin county, would be transferred from a tribunal that is purely local; I say this with all respect to that court, for I have profound respect for the learned and distinguished judge who presides over it with great ability, but no man can say that for the future it will be as it has been in the past, when he shall pass away from it. It gives us a court which shall pass upon these questions, oftentimes of transcendent importance, which will be removed from the seat of government and from the immediate and overshadowing power of the government itself, which sometimes at least imperils the justice of decision in such a tribunal so situated.

It gives us, moreover, a tribunal that exercises in some degree a visitatorial power over corporations throughout the Commonwealth, and it meets another want, the existence of which no man can deny, but the remedy for which, as proposed by the Judiciary Committee, did not meet with the approval of the Convention; that is to say, it establishes an intermediate court which shall finally dispose of cases of minor importance and thus leave the Supreme Court proper relieved from the pressure upon it and enabled to transact all the vast business which now exists and hereafter in increasing degree must press upon it.

It is a fact, as was stated upon the floor when the circuit court question was under discussion, that the Supreme Court in this district is two years and a half in arrear, and I believe it is a fact that in the Western district of the State it is even more in arrears than that. How shall we get rid of this difficulty? Gentlemen coming from other districts whose lists are smaller and are usually disposed of at each term of the court fail to realize how severe the pressure is upon the bar in this district and in the Western district of the State by reason of the impossibility of the Supreme Court, situated as it is now, getting through the mass of business which has accumulated upon it. You will not relieve the difficulty by in-

creasing the number of judges. Seven judges can decide no more cases than five. Business is to increase, and the two years and a half of accumulation of business which we have upon us now is to become still greater in the future, until it will amount to a positive denial of justice to suitors. But here is a remedy proposed which is free from the criticisms that have been heretofore upon it on this floor and which is a remedy for this difficulty, a remedy which makes two judges elected by the whole people of the Commonwealth, with whom there shall sit the judges of the court of common pleas of the particular district from which the case came up, who shall decide those cases of minor importance which ought not to occupy the time of the Supreme Court in banc and delay the business of other suitors in that tribunal.

It is for these reasons which I have thus briefly stated, and which, it seems to me, should commend themselves to the confidence of the Convention, that I have proposed this amendment. I feel, as a member of the Philadelphia bar and somewhat cognizant of the necessities of business, both in our local tribunals and in the Supreme Court, that there is a crying and vital necessity for a larger provision of judicial force than has yet been made, and for the existence of a tribunal which shall be free from those local influences which necessarily accumulate about a large city like this. All those difficulties, I think, are provided for, and I ask for this section the support of the gentlemen of the Convention.

MR. ALRICKS. Mr. President: This proposition has taken at least one of the delegates by surprise. It is thrown in upon us just after dinner, and we have had no opportunity whatever to consider it.

They ought to have a sufficient judicial force in the city of Philadelphia. No person will dispute that fact. Whether it shall be organized in a manner different from that which is to govern the other good people of the Commonwealth is another question. But, sir, when it was provided in our Constitution and in our law that the Commonwealth cases should be tried at the State Capital, it was done because it would best answer the convenience of the Commonwealth. It will be understood by gentlemen of this Convention that the public papers must be kept secure. It is necessary that they should be used in a court that is convenient to the

place where those papers are deposited. Now, I appeal to the Convention that it would be very inconvenient for the Commonwealth to take her papers away from the capital of the State in order to accommodate other persons and to have the court in which those papers were wanted located in the city of Philadelphia.

I cannot for my own part see the propriety of the argument that has been made here that this new court should be established for the purpose of trying appeals from the decisions of the accountant department. You are all familiar with the value of the papers connected with the public institutions of the Commonwealth. You know the great inconvenience to which it would subject a bank to carry their papers from one end of the Commonwealth to the other. Why then should the officers of the Commonwealth having the papers in our accountant department be obliged to take them away from the capital of the State and come to the city of Philadelphia, where a court is to be established for the trial of cases in which the Commonwealth is a party.

If the judicial force of the city of Philadelphia is to be increased, let it be so; there will no objection to it; but I hope when it is increased it will be done with reference to the fact that it is the city of Philadelphia that is to be accommodated, and that other portions of the State are not to be put to an inconvenience, and above all that it will not be argued here that the cases of the Commonwealth should not be tried where the heads of the various departments are, and where the papers of the Commonwealth are kept by law. I therefore feel it my duty, as at present advised and as I understand the proposition, to vote against it.

Mr. CUYLER. I should like to say a single word before the vote is taken. If gentlemen do not like those special provisions that relate to matters outside of the county of Philadelphia, I have not the slightest objection, if the feeling of the Convention is to strike them out, that they should do so, by an amendment. What I am really after is the local tribunal. I think these other matters would be desirable, but I shall make no fight for them, and, therefore, if gentlemen who are not satisfied will move to strike them out I shall not have a word to say.

Mr. LANDIS. Can you not divide your section?

Mr. DALLAS. Let us have a division of the question.

The PRESIDENT *pro tem*. The question is on the section.

Mr. CUYLER. The gentleman from Schuylkill (Mr. J. M. Wetherill) desires me to say that he moves to strike out from the section so much as relates to appeals from the Auditor General. His modesty forbids his rising, and therefore at his request I have ventured to make that motion in his name.

The PRESIDENT *pro tem*. The question is on that amendment to the amendment.

The amendment to the amendment was rejected, the ayes being thirty-three, less than a majority of a quorum.

The PRESIDENT *pro tem*. The question now is on the section offered as an amendment.

Mr. CUYLER. On that I call for the yeas and nays.

Mr. DALLAS. I second the call.

Mr. CURRY. I should like to hear the section read before we vote upon it.

Mr. CUYLER. I withdraw so much of the section as relates to appeals from the Auditor General, at Harrisburg, and all that relates to appellate jurisdiction.

Mr. LILLY. I rise to a point of order. I think that portion has been voted upon once, and the amendment cannot be modified.

The PRESIDENT *pro tem*. The gentleman cannot now withdraw any portion of the amendment.

Mr. CUYLER. I ask leave to withdraw from the section so much as relates to appeals from the Auditor General's office, at Harrisburg, and so much as relates to an appellate tribunal to which minor causes should go and be finally decided.

I do this not because I do not deem those desirable features, but because there seems to be so much of antagonism to them in the Convention that I would sacrifice those for the sake of securing what I esteem to be a great boon to the county of Philadelphia.

Mr. DARLINGTON. As a matter of order, I think the gentleman has a right to modify his amendment.

Mr. KAINE. I hope the gentleman from Philadelphia will indicate where he proposes to strike out from. If it is from the words "*nisi prius*," it will be all right. I think that is what he wants.

Mr. D. N. WHITE. I rise to a point of order. The yeas and nays have been ordered and all debate is out of order.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

Mr. TEMPLE. I submit that unless the Chair has withdrawn the call for the yeas and nays, the proposition is not in order.

The PRESIDENT *pro tem.* I have not done so, and cannot withdraw them. The Clerk will call the roll.

Mr. CUYLER. Can I not amend the proposition?

The PRESIDENT *pro tem.* Not after the yeas and nays have been ordered.

The CLERK proceeded to call the roll and Mr. Achenbach answered to his name.

Mr. CUYLER. I made the call for the yeas and nays, and it was seconded by Mr. Dallas. I ask leave to withdraw the call.

Mr. DALLAS. I withdraw the second.

The PRESIDENT *pro tem.* The call is withdrawn.

Mr. LILLY. I renew the call, and I make the point that after the yeas and nays are called for the delegate cannot withdraw the call.

Mr. CUYLER. Mr. President: Have I the floor?

The PRESIDENT *pro tem.* The delegate from the city has the floor.

Mr. CUYLER. Then I move to amend by striking out the words I have indicated.

Mr. LILLY. I rise to a point of order. My point of order is this: The yeas and nays were called for, and after they were ordered it was beyond the reach of the gentleman calling for the yeas and nays to withdraw the call. In addition to that the name of one gentleman has been called and his vote recorded.

The PRESIDENT *pro tem.* The Chair has decided the point.

Mr. TEMPLE. The roll had been partly called.

The PRESIDENT *pro tem.* The delegate from the city moves to amend the amendment in the manner that he will indicate.

Mr. CUYLER. I propose to amend by striking out the words "have jurisdiction of all appeals from the settlement of accounts by the Auditor General of the State," and also by striking out all of the amendment after the word "defendants."

Mr. SHARPE. I should like to have it read as it will stand if amended.

Mr. HOWARD. I hope it will be read, I have an idea that it is intended that we shall not sue the Pennsylvania railroad company except in Philadelphia. I suppose that is what it is for.

The PRESIDENT *pro tem.* The amendment will be read as proposed to be amended.

The CLERK read as follows:

"There shall be established a court in the city of Philadelphia to be called 'the Supreme Court *nisi prius*,' having two judges elected by all the qualified voters of the State, and holding office for fifteen years; but in the election of said judges, where there are to be more than one to be elected, no voter shall vote for more than one. They shall exercise the jurisdiction now possessed by the court of *nisi prius*, and in addition shall have original jurisdiction in all proceedings, either in law or equity, throughout the Commonwealth in which corporations, other than municipal, are defendants."

Mr. CORBETT. As I understand that proposition, we are not simply asked throughout the State to elect judges to hold a court in the city of Philadelphia, but we are asked to concede to that court original jurisdiction in all cases in which corporations are concerned.

Mr. CUYLER. Cases in which corporations are defendants, and original, but not exclusive, jurisdiction.

Mr. CORBETT. Exactly. If a corporation exists in the western part of the State, it is to be sued in this court in Philadelphia.

Mr. CUYLER. "May be," not "shall be."

Mr. CORBETT. Well; "may be." It can be sued here.

Mr. CUYLER. Move to amend it in that particular.

Mr. CORBETT. No, sir; I shall not move to amend, because I am opposed to the whole section in all its four corners. I am not willing to elect a judge for the city of Philadelphia. If she is not competent to elect judges to administer justice within her corporate limits all I have to say is strike out the power to elect at all, and let them be appointed. It is for herself, I say, to provide her own judges. I am not willing that we shall be convulsed all over the State by an election of judges who are to preside in the city of Philadelphia. I am not willing to do that. I am told that it has been done, but it has never been done with my consent. I never voted that there should be a *nisi prius* court in the city of Philadelphia. The Legislature gave it to you. She took the judicial force that belonged to the whole Commonwealth and she ap-

propriated it to the city of Philadelphia. I say it is not right to ask the citizens of this State to be convulsed in an election that the city of Philadelphia alone is interested in. It is not right to give to a court, so constituted, jurisdiction over every corporation within the limits of the State. Other members may do as they please, I care nothing about it; but I shall not give my hand to this measure, nor shall I vote for it.

Mr. HOWARD. Mr. President: I am very sorry to say that I have a very bad cold, so that I shall be unable to make a speech. This, I have no doubt, will make the Convention very happy, while it (the cold) makes me very uncomfortable. I was going to offer an amendment, and I think I shall before I get through, and that is to strike out "Philadelphia" and insert "Pittsburg," which is a great deal better place to sue corporations than Philadelphia. [Laughter.] It is a curious proposition, is it not? Take it altogether, it is really funny. My friend, the delegate from Clarion, (Mr. Corbett,) has treated it seriously, as though the delegate from Philadelphia (Mr. Cuyler) had offered this in serious earnest and expected it would be adopted by the Convention. Why, Mr. President, it only provides that if a person suffers damages from any of the corporations throughout the Commonwealth he shall come to Philadelphia to bring his suit, but it leaves them at liberty to go over the Commonwealth and sue anybody wherever they can get a court. It is a kind of one-sided machine at any rate, and I think that in order to accommodate the public, if we are to have this kind of court it would be far better to strike out "Philadelphia" and insert "Pittsburg;" and in order to test the sense of the Convention, I move to strike out "Philadelphia" and insert "Pittsburg," which will be much more convenient for plaintiffs, and on that I call for the yeas and nays.

Mr. H. W. SMITH. I move further to amend by striking out "Pittsburg" and inserting "Reading." We have a better court room there than any room in Philadelphia.

The PRESIDENT *pro tem*. There is an amendment to the amendment pending. The question is on the amendment of the delegate from Allegheny (Mr. Howard) to the amendment of the delegate from Philadelphia (Mr. Cuyler.) I suppose the delegate from Berks did not mean his

amendment seriously, or he would say "Erie." [Laughter.]

Mr. HOWARD. I merely want "Pittsburg" inserted. I withdraw the call for the yeas and nays.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to.

Mr. CUYLER. Now I move further to amend by striking out so much as relates to corporations.

Mr. DALLAS. What was the vote just now taken?

The PRESIDENT *pro tem*. "Philadelphia" was stricken out and "Pittsburg" inserted.

Mr. CUYLER. I understood the Chair to decide that there was an amendment pending and that the amendment of the gentleman from Allegheny was out of order, and therefore I understood the vote just taken to be on my amendment.

The PRESIDENT *pro tem*. Not at all. "Pittsburg" has been inserted.

Mr. ELLIS. I move to reconsider the vote on the amendment inserting Pittsburg. I voted with the majority.

Mr. BROOMALL. I second the motion. I voted in the majority.

The PRESIDENT *pro tem*. The question is on the motion to reconsider.

The motion was not agreed to, there being on a division, yeas thirty-four, noes thirty-six.

Mr. CUYLER. Mr. President: I wish I could have leave from the House to withdraw the amendment. ["No."] I offered the amendment in sober gravity.

The PRESIDENT *pro tem*. The delegate can move to postpone the section, I suppose.

Mr. CUYLER. Well, let the vote be taken.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia as amended.

Mr. BOYD and others called for the yeas and nays.

Mr. ARMSTRONG. I trust now that the gentleman who has offered this amendment, who did it in good faith and with the expectation that he would advance the interests of Philadelphia, will be allowed to withdraw it. It is against the sense of this Convention as clearly established, and why should we refuse him the courtesy of withdrawing it when he asks to do so? I think it is a discourtesy

which we ought not to perpetrate. I hope he will be allowed to withdraw his amendment—

Mr. TURRELL. I call the gentleman from Lycoming to order.

The PRESIDENT *pro tem*. The proposition cannot be withdrawn now after a vote has been had upon it.

Mr. DALLAS. Unanimous consent can allow it to be done.

Mr. HARRY WHITE. I move that unanimous consent be given to withdraw the proposition.

The PRESIDENT *pro tem*. Does any delegate object?

Mr. LILLY. I object.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Cuyler) as amended.

The amendment was rejected.

Mr. SHARPE. I offer the following as a new section:

"The office of associate judge not learned in the law is abolished; but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

Mr. President, I offer this section simply for the purpose of having a fair and square vote whether this office is to be continued longer or not. I call for the yeas and nays.

Mr. BOYD. I second the call.

Mr. COCHRAN. I do not want to detain the Convention on a distinct proposition of this kind, but I want simply to say that I cannot vote for it as it stands under the circumstances in which we are placed. I believe it would be impossible for us to get along without these associate judges in some of the counties of the State; and that being the case, to abolish them utterly and entirely will deprive several of the counties of the State of that assistance which they need. I was very anxious that this office should be abolished myself, for I do not think it is generally very useful; but there are circumstances in which the services of an associate judge do become necessary and are required, and as we are now situated I cannot vote for an unconditional abolition of the office.

The yeas and nays having been required by Mr. Sharpe and Mr. Gibson, were taken and were as follow, viz:

Y E A S.

Messrs. Alricks, Baer, Baker, Barclay, Boyd, Clark, Corbett, Corson, Darlington,

De France, Edwards, Ellis, Finney, Gilpin, Hanna, M'Murray, Palmer, H. W., Patton, Reynolds, Sharpe, Simpson, Van Reed, and Worrell—23.

N A Y S.

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Beebe, Biddle, Bigler, Black, Charles A., Black, J. S., Brodhead, Broomall, Buckalew, Bullitt, Carter, Cochran, Cronmiller, Curry, Curtin, Davis, Elliott, Ewing, Fell, Fulton, Funck, Gibson, Guthrie, Hall, Hay, Horton, Kaine, Lamberton, Landis, Lawrence, Lear, Lilly, Littleton, M'Culloch, Mann, Mantor, Metzger, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Ross, Smith, H. G., Smith, Henry W., Stewart, Temple, Turrell, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N., White, Harry, White, J. W. F. and Wright—63.

So the amendment was rejected.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baily, (Perry,) Bannan, Bardsley, Bartholomew, Bowman, Brown, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Dunning, Green, Harvey, Hazzard, Hemphill, Heverin, Howard, Hunsicker, Knight, Long, MacConnell, MacVeagh, M'Camant, M'Clean, Minor, Mitchell, Mott, Newlin, Niles, Porter, Pughe, Runk, Russell, Smith, William H., Stanton, Struthers, Woodward and Meredith, *President*—47.

Mr. BRODHEAD. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. TEMPLE. I second the motion.

Mr. BROOMALL. I ask the gentleman from Northampton to withdraw that motion, while I make a privileged motion.

Mr. BRODHEAD. I withdraw the motion for that purpose.

Mr. BROOMALL. I move to reconsider the vote by which section twenty-four was defeated.

The PRESIDENT *pro tem*. How did the gentleman from Delaware vote?

Mr. BROOMALL. I voted with the majority.

The PRESIDENT *pro tem*. Is the motion seconded?

Mr. VAN REED. I second the motion.

The PRESIDENT *pro tem*. Did the gentleman from Berks vote in the majority?

Mr. VAN REED. I did.

Mr. LILLY. Upon that motion I call for the yeas and nays.

Mr. ARMSTRONG. This is a debatable motion, since the question to which it applies is debatable.

MANY DELEGATES. Oh, no!

Mr. ARMSTRONG. If there is any doubt about it, I will produce the authority, but I suppose after spending two or three days upon this question—

Mr. DARLINGTON. Is this question debatable, Mr. President?

The PRESIDENT *pro tem*. The Chair does not think it is.

Mr. DARLINGTON. It has been decided by the President of this Convention that a motion to reconsider cannot be debated.

The PRESIDENT *pro tem*. The Chair does not think the motion can be debated, but if the gentleman from Lycoming has any authority upon the subject, the Chair will be glad to hear it.

Mr. HARRY WHITE. I do not desire to interpose any objection to the gentleman from Lycoming reading any good authority on parliamentary law which bears upon this subject; but I submit as a question of order that this Convention should follow the rule as established by the permanent President of the Convention.

The PRESIDENT *pro tem*. Our own rules are certainly our guide, and in them it is laid down that a motion to reconsider is not a debatable question. It may be, however, that a good authority upon this subject will take a different position, and if the gentleman from Lycoming has any such authority, the Chair will be glad to hear it read.

Mr. ARMSTRONG. I do not so understand it. This is a privileged motion.

Mr. STEWART. Read the rule.

Mr. ARMSTRONG. I cannot find any such rule, and if the Clerk can refer the Convention to any rule on the subject I shall be glad to hear it. This is undoubtedly a privileged motion, and as it brings up the merits of the whole question, if the original question was debatable, then the motion to reconsider is debatable. I cite as authority upon that point Barclay's Manual:

"A motion to reconsider is not debatable, if the question proposed to be reconsidered was itself not debatable."

So authorities run along holding to that doctrine; but I do not think it necessary to quote them. We have already spent

two or three days upon this question, and to reconsider will only be to open the question again for a long and tedious debate upon a matter which this House well understands already.

The PRESIDENT *pro tem*. The Chair will decide that the question is not debatable. The question is upon the motion to reconsider the vote by which the twenty-fourth section was rejected.

Mr. H. W. PALMER. I call for the yeas and nays.

Mr. SHARPE. I second the call.

The yeas and nays were as follow, viz :

YEAS.

Messrs. Achenbach, Baer, Baker, Beebe, Biddle, Brodhead, Broomall, Clark, Corbett, Corson, Darlington, Davis, De France, Elliott, Fell, Gibson, Hanna, Hay, Horton, Howard, Kaine, Knight, Lamberton, MacConnell, Mann, Mantor, Parsons, Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Simpson, Smith, H. G., Temple, Turrell, Van Reed, Walker, White, Harry, White, J. W. F. and Wright—39.

NAYS.

Messrs. Atricks, Armstrong, Bailey, (Huntingdon,) Barclay, Bigler, Black, Charles A., Black, J. S., Boyd, Buckalew, Carter, Cochran, Cronmiller, Curry, Curtin, Edwards, Ellis, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Landis, Lawrence, Lear, Lilly, Littleton, M'Murray, Metzger, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Purman, Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N. and Worrell—48.

So the motion to reconsider was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailly, (Perry,) Bannan, Bardsley, Bartholomew, Bowman, Brown, Bullitt, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Dunning, Finney, Green, Harvey, Hazard, Hemphill, Heverin, Hunsicker, Long, MacVeagh, M'Camant, M'Clean, M'Culloch, Minor, Mitchell, Mott, Newlin, Niles, Porter, Pughe, Runk, Russell, Stanton, Struthers, Woodward and Meredith, *President*—46.

SEVERAL DELEGATES addressed the Chair.

Mr. BRODHEAD. I now renew my motion to refer the article to the Committee on Revision and Adjustment.

The PRESIDENT *pro tem.* The gentleman from Luzerne (Mr. H. W. Palmer) is recognized as having the floor.

Mr. BRODHEAD. I only withdrew my motion to accommodate the gentleman from Delaware.

The PRESIDENT *pro tem.* The Chair has recognized the gentleman from Luzerne.

Mr. H. W. PALMER. I offer the following amendment, to come in at this place as a new section;

"In counties where associate judges shall be authorized by law, such judges shall be chosen in the year 1877, and every fifth year thereafter, in the same manner as inspectors of elections under this Constitution. Any casual vacancy in the said office shall be filled by the Governor by the appointment for the unexpired term of an elector of the proper county who shall have voted for the officer whose place is to be filled."

I do not suppose that anything short of an earthquake or a thunderbolt could arrest the attention of this Convention now. You have decided to retain the associate judges. Now, let us reduce the nuisance to the lowest possible minimum by applying the same principle in their election that has been adopted for commissioners and county auditors. It is provided by this section which I have offered that after the year 1877—thus providing for the expiration of all the terms of the associate judges now in office—the associate judges shall be elected as inspectors of election are to be chosen under this Constitution. That is to say, every citizen is to have the privilege of voting for one of these officers, thus securing a representation of two political parties on the bench and transforming the associate judges from mere partisans, possibly to something better. The section further provides that in case of a casual vacancy occasioned by death, resignation or otherwise, the vacancy shall be filled by the appointment by the Governor, the appointee to be taken from the same party as the officer whose term is vacant. The principle of this amendment has been sufficiently discussed. It is doubtless thoroughly understood, and I trust that the Convention will adopt and apply it to the election of associate judges.

The PRESIDENT *pro tem.* The question is upon the amendment.

The amendment was rejected.

Mr. BRODHEAD. I now again move that the article be referred to the Committee on Revision and Adjustment.

The PRESIDENT *pro tem.* The Chair does not think it to be in his power to entertain a motion of that kind which might prevent gentlemen from proposing new sections. Several gentlemen are on the floor apparently with sections to offer.

Mr. ANDREW REED. I move a reconsideration of the vote by which the twenty-third section was adopted.

The PRESIDENT *pro tem.* How did the gentleman vote?

Mr. ANDREW REED. I voted in the affirmative.

The PRESIDENT *pro tem.* Is the motion to reconsider seconded?

Mr. STEWART. I second the motion.

The PRESIDENT *pro tem.* Did the gentleman from Franklin vote in the affirmative?

Mr. STEWART. He did.

The motion to reconsider was rejected.

Mr. HALL. I offer the following amendment, to come in as a new section:

"SECTION.—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. The evidence taken and the law as declared shall be filed on record, with right of appeal from the final judgment as in other cases and with like effect as appeals in equity."

Mr. BOYD. On that I call for the yeas and nays.

Mr. BROOMALL. I second the call.

Mr. BUCKALEW. I would like to make one inquiry. This is exactly the principle of the existing referee law in this State, which has been applied in many counties. The parties may select as a referee the judge of an adjoining district as they often do, and he hears the case, and a writ of error goes direct from him to the Supreme Court.

Mr. HALL. You cannot compel the judge to hear the case.

Mr. BUCKALEW. The gentleman says you cannot compel him to hear it, but the principle is the same. By consent of both parties the judge, a man learned in the law, shall hear the law and the facts, and a writ of error shall go to the Supreme Court. What possible objection is there to this, if both parties agree and file their agreement in writing, and thus permit a summary trial of the question before a

judge, saving an enormous consumption of the public time and the expense of a lawsuit which may be more or less protracted? I cannot see any objection to it and I cannot comprehend why any man in or out of the Convention should object to it.

Mr. PURMAN. I differ with my distinguished friend, the gentleman from Columbia, (Mr. Buckalew,) for I do see some reasons why persons in the Convention and out of the Convention should object to this proposition. It compels judges to find the facts. It is a responsibility which has heretofore never been placed on the judicial office. The discrimination between the powers of the judge and the powers of the jury has been well defined and well preserved. The jury comes from the country at large, and nobody knows who they are until their names are called. They vanish again and no man knows who they were. The judge must make his daily round among the people. He must ascertain the facts and determine upon them. He must in his official capacity meet all these parties, and this places the judge in such relations to the suitors that he ought not to be called upon to perform such duties. There are many other considerations that I might adduce against this proposition, but I believe that it is unnecessary to take up the time of this Convention with them. I trust that the section will be voted down.

Mr. BROOMALL. I trust that the Convention will adopt this section. I see no reason why, if the parties in the case should agree, a judge may not find the facts, saving the delay and the expense and the uncertainty in many cases of a jury trial. If the parties are willing, nobody else ought to object. The only trouble is now that although the court may find the facts at the request of the parties, the case cannot go up on that finding. This is a provision making it legal for the judge to find the facts and also making it his duty to find the facts, where the parties unite to ask it to be done. I cannot see any reason in the world why the people should not have this privilege. It would be a great saving of expense and time.

Mr. H. W. PALMER. I think that I can suggest a reason why this section ought not to be passed. The Convention seems desirous to load down the judges of this Commonwealth and to transform them from officers of judicial dignity to mere arbitrators and auditors. Now, in addi-

tion to what we have done, put the duty of finding facts on the judge, and how long will it be before one-half of the citizens of a county will hate and despise their judge, because in the performance of his duty he must believe one and disbelieve another. In the performance of the duty of finding facts he will decide for one man and against another, and in this way enmity will grow up between the people and their judges, and hatred will be engendered, and the judges, instead of enjoying the confidence and respect of the community, will be hated and despised. That, I think, is a good reason why this section should not pass.

Mr. BEEBE. I just wish to say that this is one of the much needed reforms which our section of the country elected delegates to hold a Convention for the purpose of accomplishing. This subject has been well considered, and in the minds of our community it is looked upon as a desired and absolutely needed reform, as much so as any before us.

Mr. DARLINGTON. If there has been any question which has been well discussed, thoroughly considered, and finally settled by this Convention, this is that very one. It has been over and over again rejected by this Convention, and there has been no new light thrown upon the subject now. I do not know what has been done with gentlemen in the way of changing their minds, but this is the same project so often defeated, and in its bold and naked form is intended to compel a judge to decide the facts of any case instead of the jury; to compel the judge to take the trouble of deciding the facts, reducing the testimony to writing and give his decision. Then the Supreme Court are to decide upon that as upon an appeal in a case in equity. It requires them again to go over all the facts of the case, unless, indeed, they should say that the finding of the court below is conclusive as to facts. But the great objection is that you are throwing upon a law judge the decision of facts, for which he is not particularly qualified and for which an unlearned man is better qualified.

Mr. W. H. SMITH. I appeal to the gentleman who calls for the yeas and nays on this question to withdraw that call. I do it in the interest of progress in this business. We can certainly settle this question without an appeal to the time-consuming process of the yeas and nays. I hope the call will be withdrawn, and that we shall settle this question.

The *PRESIDENT pro tem.* The yeas and nays have been ordered, and the Clerk will call the names of delegates.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Achenbach, Armstrong, Baer, Barclay, Beebe, Boyd, Brodhead, Broomall, Buckalew, Bullitt, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Davis, De France, Dunning, Edwards, Fell, Finney, Fulton, Gilpin, Guthrie, Hall, Howard, Landis, Lear, Lilly, MacConnell, M'Clellan, M'Culloch, Mantor, Patterson, D. W., Patterson, T. H. B., Patton, Reynolds, Ross, Simpson, Smith, Wm. H., Turrell, White, J. W. F. and Wright—45.

N A Y S .

Messrs. Alricks, Bailey, (Huntingdon,) Baker, Biddle, Black, J. S., Brown, Clark, Darlington, Elliott, Ellis, Ewing, Funck, Gibson, Hanna, Hay, Horton, Kaine, Lamberton, Lawrence, M'Murray, Mann, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Purman, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Sharpe, Smith, Henry W., Stewart, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, Harry and Worrell—41.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baily, (Perry,) Bannan, Bardsley, Bartholomew, Bigler, Black, Charles A., Bowman, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Newlin, Niles, Porter, Pughe, Purviance, Sam'l A., Runk, Russell, Smith, H. G., Stanton, Struthers, Temple, Woodward and Meredith, *President*—47.

Mr. FUNCK. I offer the following as a new section:

"SECTION —. The Legislature shall have authority to abolish the office of associate judge after the term of office of the present incumbents shall have expired."

I voted, Mr. President, in favor of retaining the office of associate judge, because I conceived that officer indispensable in counties in which no president judge resides. For instance, in judicial districts composed of more than one county,

the members of the bar are unable to get along without the advantage of an associate judge in a county where the president judge does not reside. In the counties where they have a president judge, I apprehend an associate judge is unnecessary; he can perform no useful office. I have submitted this amendment for the purpose of giving the Legislature authority to abolish that office in all the counties where they have a president judge, and if hereafter each county should have a law judge, the office of associate judge might be entirely abolished. Without a constitutional permission of this character, the Legislature, as the Constitution now reads, would have no authority to abolish the office.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Lebanon.

The amendment was agreed to; there being on a division yeas thirty-six, noes thirty-two.

Mr. COCHRAN. I move to reconsider the vote by which the twenty-first section of this article was adopted, for the purpose of amending the last clause in the report according to a suggestion which I made this morning.

The *PRESIDENT pro tem.* It is moved to reconsider the vote by which the twenty-first section was adopted. Who seconds the motion?

Mr. BAER. I second the motion.

The *PRESIDENT pro tem.* Did the gentleman vote with the majority?

Mr. BAER. I did.

Mr. ARMSTRONG. Will the gentleman from York indicate the purpose for which he moves a reconsideration?

Mr. COCHRAN. I will do so. I want to make the last clause of that section read as follows:

"All accounts filed in the register's office and orphans' court in those counties in which separate orphans' courts shall be established shall be audited by the court without expense to the parties."

The object is to remove the burden of auditing accounts from those counties in which there are no separate orphans' courts, and where there are separate orphans' courts then the accounts to be audited by the courts without expense.

The *PRESIDENT pro tem.* The question is on the motion to reconsider.

Mr. CORBETT. I call for the yeas and nays.

Mr. COCHRAN. I second the call.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Baer, Bailey, (Huntingdon,) Baker, Brown, Buckalew, Carter, Clark, Cochran, Corson, Cronmiller, Curry, Darlington, Davis, Dunning, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Hanna, Howard, Kaine, Lamberton, Landis, Lawrence, M'Clean, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Purman, Read, John R., Reed, Andrew, Ross, Smith, H. G., White, Harry, White, J. W. F. and Wright—44.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Barclay, Beebe, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Bullitt, Corbett, Curtin, De France, Edwards, Elliott, Hay, Horton, Lear, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Metzger, Parsons, Patterson, T. H. B., Purviance, John N., Rooke, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N. and Worrell—42.

So the motion to reconsider was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baily, (Perry,) Bannan, Bardsley, Bartholomew, Bigler, Black, Charles A., Bowman, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Newlin, Niles, Porter, Purviance, Samuel A., Reynolds, Runk, Russell, Stanton, Struthers, Temple, Van Reed, Woodward and Meredith, *President*—47.

MR. COCHRAN. I now move to amend the section by inserting after the word "court," in the seventeenth line, these words: "In those counties in which separate orphans' courts shall be established."

The idea of this amendment, as I before suggested, is simply to relieve the courts in those districts in which separate orphans' courts shall be established from the unendurable burden which would be imposed upon them of auditing all these accounts. It would be practically impossible for them to do it; and if they were required to do it, the result would be an

indefinite postponement of the settlement of decedents' estates. The amendment does not interfere at all with the regulations prescribed or desired for the city of Philadelphia. It simply affects those districts in which these separate orphans' courts shall not be established, and I think it will occur to every gentleman here that it will be impossible for the courts in those districts to discharge this duty.

MR. ARMSTRONG. It is not perhaps worth while to renew the discussion on this question. I wish simply to bring to the notice of the Convention precisely the effect of the amendment. As the section now stands, after full discussion when it was under consideration before, it was determined by the Convention that these accounts should be audited without expense in every county of the State. If I supposed that the Legislature would give no sort of relief and that the judges must personally, and each for himself, hear all the evidence and pass upon the accounts, item by item, as the auditor would do, I should consider it impracticable; but the auditing of the account essentially is the passing upon the account. The evidence might be taken in any manner designated by law, as in equity, or the whole duty might be referred to the clerks who have official connection with the courts as respects these accounts. I do not apprehend the difficulty which the gentleman from York apprehends, or I would be of his opinion. I do not think that practically the difficulties which he apprehends will necessarily grow out of this section. I believe the section to be one of great value, even as modified by the amendment which he proposes, but I believe it is of greater value as it stands. If in any district a judge is over-worked, the remedy is easy by an application to the Legislature, which would not be refused I apprehend, to have a separate orphans' court constituted where undue burden exists. Besides, it preserves the uniformity of the system throughout the State, which has been one of the chief purposes, certainly a prominent purpose, of the Convention to accomplish in our judicial system. I will forbear from any further comment.

MR. CORBETT. I hope this amendment will not prevail. If it be adopted, in populous districts decedents' estates will be audited without any expense to the State, while in the country districts the estates

will have to pay the fees of auditors; and let me say those fees are becoming onerous. They have not grown to such enormous amounts as we are told they have in this city; but they are approximating fast towards it, and they are becoming oppressive. I hope this Convention will not adopt a rule in this matter with reference to one part of the State and a different rule as to the other. The judicial force can be increased and this expense can be saved.

Mr. BUCKALEW. A remark which has been made in favor of the amendment proposed by the gentleman from York is not satisfactory to me. If we are to adopt this section in its present form in order to force the Legislature to establish these orphans' courts in most of the counties, then indeed we have an argument against its adoption.

Mr. CORBETT. I rise to an explanation. I did not say that the courts could be increased, but that the judicial force can be increased, and not by any orphans' court.

Mr. BUCKALEW. I was not referring to anything the gentleman from Clarion had said.

Now, Mr. President, with regard to Philadelphia and Allegheny, we have made this arrangement: That the expense of auditing estates shall not be borne by the parties in each case, but shall be borne by the public. We provide that the judge shall receive a salary, to be paid him, instead of fees being paid by the parties to the proceeding. Now, in the interior if there is any abuse in this matter of auditing accounts (of which I know nothing in my section) the Legislature can extend this principle which we have applied where abuses do exist, in Philadelphia and Allegheny, and make it co-extensive with the entire Commonwealth if they choose; but at present it seems to me very improvident to establish this as a uniform rule throughout the State.

This provision is that the judge himself shall audit the accounts. I do not know what meaning will be attached to that; but an auditor, as we understand an auditor at present, is a person appointed by the court who hears all the testimony, who is to pass upon the credibility of the witnesses produced before him, who is to decide all the questions of law and all the intricate questions of fact involved, and who makes his report to the court. Now, when you say that the court shall audit an account I understand that you charge

upon the judge himself that whole duty. The gentleman from Lycoming contemplates something very different under legislation at Harrisburg. It is that the Legislature shall relieve the judge from the pressure of this broad duty, that it shall provide that he may appoint examiners who shall hear testimony and who shall make report to him of the evidence taken, and then that he shall simply review that evidence, and probably hear the parties by argument, to make up his judgment. Without this provision the Legislature can do all that, and doubtless, if there be any necessity for it, on application they will do it. They will provide for the interior that these auditors, instead of passing judgment on questions of law and fact involved in hearings before them shall be simply examiners, and the court shall pass final judgment. As there is no necessity for the provision, therefore, I am in favor of leaving it where the gentleman from Lycoming proposes to go at all events; that is, with the Legislature; and I am impressed with the suggestion which he makes that if this section is retained it will compel the Legislature to extend these orphans' courts and thus to increase the number of judges in the State.

Now, sir, I am getting tired of creating new judges, two in the Supreme Court, two in the common pleas of Philadelphia, and additional orphans' court judges in Philadelphia, Pittsburg and Luzerne, and nearly one half of the Convention want us to add from fifteen to twenty more *visi prius* judges, all these to be quartered upon the treasury at from \$4,500 to \$7,000 a year. I think we had better not set traps for the Legislature to compel them to further increase our judicial force hereafter.

Mr. EWING. I am in favor of the amendment proposed by the delegate from York. I think, in a large portion of the counties, it would be well to leave this matter to the Legislature, who can make provision to remedy any evils or defects that may arise in those counties that have not separate orphans' courts. I will not repeat what has been so well said by some of the gentlemen favoring this amendment as to the impropriety of burdening the courts; but I imagine, in those counties especially where you have not a law judge located in the county, and where a district is composed of two, three, four or five counties, he cannot be present at the times and as often as will

be convenient to the parties in attending to an audit before the court. That audit, as I understand it, and as I suppose it is generally understood by the profession, means the taking of testimony, the entire investigation of the account.

Another thing: Unfortunately or fortunately, I do not know which, but a small proportion of lawyers, and I do not know that any larger proportion of judges, are competent accountants. Not one lawyer in ten is competent to take up and unravel a complicated and troublesome account, and probably some of the best lawyers are among the poorest accountants; and I know that a very considerable number of excellent, competent judges are totally unfitted to unravel a complicated orphans' court account. Now, in the counties where we are to have separate orphans' courts I imagine that judges will be selected with special reference to their legal ability, and also to their ability as accountants, and they will be much more competent to audit and pass upon these accounts than the judges who are selected for the common pleas without any reference to their qualifications as accountants. I shall vote for the amendment.

MR. BEEBE. Mr. President: I see no reason why the State should pay for the orphans' court and the orphans' audits in cities, and why in the country the estates, which are generally poor, should have to bear all the burden of the expense. Again, this abuse is not confined to cities alone, but it is becoming an evil all over the land; and that was the reason why this Convention voted largely for the section as it is. Now, why they should reverse this action I cannot conceive. I trust that the amendment will be voted down and the section retained.

MR. HANNA. Mr. President: Just as I anticipated when this special constitution manufacturing was entered into by the Convention, they would before they were through see many practical difficulties in the way of its being a successful machine so as to work satisfactorily to all parts of the Commonwealth.

I opposed this section because it was legislating for the city of Philadelphia and two other sections of the State, and not a general provision applicable to the whole Commonwealth. I am opposed to it upon principle. We have heard very much in considering this report of the duty of maintaining the uniformity of our judicial system, and for that reason I am op-

posed to the amendment of the gentleman from York. He sees the difficulty of imposing this burden of clerkships—for it is nothing but clerical duty—on the judges of his district. He sees the difficulty now of making the president judge of his district a mere clerk to audit administrators', executors' and guardians' accounts, and I see the difficulty here. I see why it should not apply to the city of Philadelphia with equally good reason, and for one I cannot consent that the judges of a constitutional court should be reduced to mere clerks.

The gentleman from Columbia (Mr. Buckalew) has spoken against increasing the number of judges, and I wish to correct what I think is a misapprehension on his part when he says that this section will do, because the municipalities will pay the salaries of the separate orphans' court judges. That is a mistake.

MR. BUCKALEW. No, sir, I did not say so.

MR. HANNA. I understood the gentleman to say that the municipality would pay the expenses of these courts, pay the salaries of the judges, and I differ with him because they will be State judges paid by the Commonwealth.

MR. BUCKALEW. Of course they will be paid by the State unless a law is passed imposing that duty on the city.

MR. HANNA. I do not see how that could be done. They will be just as much judges of the Commonwealth and State officials as the judges of the court of common pleas, and we have provided in this very article that the judges of the courts shall be paid by the Commonwealth and receive no salary, perquisite or anything of the kind from any other source. Therefore they must all be paid by the Commonwealth, and now if you establish a separate orphans' court for the city of Philadelphia, ten competent judges will be required.

MR. CORBETT. It says that they shall be paid by the State.

MR. HANNA. It does; but I have just said now that the orphans' court in the city of Philadelphia certainly cannot be managed without at least ten judges, in order to do all the auditing of the hundreds, I might almost say a thousand, of accounts annually filed in the register of wills' office. Just look at that, Mr. President. Those judges will be paid at least five thousand dollars per annum, and ten judges would add an additional sum to the cost of the judiciary of at least fifty

thousand dollars per annum. I think it is all wrong. The Commonwealth should not pay for the settlement of decedents' estates. We provide here that they shall be settled without any cost to the parties. I say it is all wrong. The parties ought to pay for it. Why should the Commonwealth at large be at the expense of settling a guardian's account, an executor's account, an administrator's account? I can see no reason whatever for it, but the parties themselves should be at the expense of it, and properly and naturally so.

But, sir, the evil of excessive costs and charges can be corrected. I have no fear whatever on that score. We have our acts of Assembly legislating upon the subject, and the courts do adhere to it whenever their attention is brought to it; and that is the proper plan. They are the proper persons to correct abuses. But here we are now providing for a separate judiciary, expensive to the State, and relieving the proper persons that ought to pay for the expense of settling the estates in which they are interested. I cannot vote for this amendment, because, as I said before, it is destroying the uniformity we have heard so much about; and then, finally, I shall vote against the whole section.

Mr. BAER. I hope the amendment of the gentleman from York will prevail. As much as I was in favor of the clause proposed to be stricken out, originally, I am opposed to retaining it now, because the necessity for it ceased the moment we voted down section twenty-four; and I ask the lawyers of the interior, living in counties where no president judge resides, what would be the effect of this provision, and whether they are willing to change the practice as it now prevails and adopt this; whether this will not necessitate the fixing of a week for the special hearing of auditors' reports at which the same rigid rules will be enforced as are enforced on the trial of cases in the common pleas? A party will go there to have his account audited, and the court will expect him to have all his witnesses there and finish at the first hearing. The purpose of an auditing is that parties shall have ample time and opportunity of being heard and the auditor full time for hearing and eliciting all the facts, and if it becomes necessary it may be adjourned from day to day, that all the facts may be ascertained; but the moment you fix in the Constitution the pro-

vision that we have now there the judge will be so burdened with labors when he comes from another county that he will be compelled to ask you to go through your hearing at once, as though you were in a court trying a cause, and the effect will be that cases will not be tried half so well nor results attained half so well as they are by the system that now prevails. That it should apply to cities and to counties where they have separate orphans' courts, I agree, and will vote for so much; but I will vote to strike out all that the gentleman from York proposes to strike out and insert what he proposes to insert, in order that the interior may not be afflicted as it would be by that provision.

If section twenty-four is restored I shall then again approve of the clause proposed to be stricken out.

Mr. BRODHEAD. Mr. President: I move that the hour of adjournment be extended half an hour for the purpose of finishing this article. ["No!" "No!"] If we do not finish this article this afternoon we shall waste the whole day tomorrow on it.

Mr. HARRY WHITE. Do I understand that the delegate from Somerset has concluded?

The PRESIDENT *pro tem*. The Chair so understood.

Mr. BROOMALL. I supposed I had the floor, if the motion of the gentleman from Northampton was not in order.

The PRESIDENT *pro tem*. The gentleman from Delaware has the floor.

Mr. BROOMALL. I shall not occupy two minutes. I only desire to say that the section as it stands makes the Commonwealth bear the expense of the auditing of accounts in all the counties of the State. The amendment proposes to make exceptions of certain small counties, among which mine happens to be numbered. Now, I am not willing that my constituents shall bear the expense of auditing their own accounts and shall help bear the expense of auditing the accounts in Philadelphia and Pittsburg also by paying their State taxes.

Mr. HARRY WHITE. ["Question!" "Question!"] I have not been heard on this section, and as it is a matter of the greatest moment possibly to the district in which I reside—and I know it is a matter of the greatest moment to the people at large—I desire to say a word.

I understand the precise question to be on the amendment offered by the honorable delegate from York (Mr. Cochran.)

May I inquire from the Chair the exact technical shape of the question before the Convention?

The PRESIDENT *pro tem.* The shape of the question is to insert after the word "court" the words, "in those counties in which a separate orphans' court shall be established."

Mr. HARRY WHITE. Mr. President: I sympathize entirely with the purpose of the amendment offered by the honorable delegate from York; and in corroboration of that, I would observe that I voted against this section entirely when it was before the Convention on a prior occasion. I voted against it because I was opposed to the principle of allowing the Legislature to impose upon the several counties of this Commonwealth, irrespective of population, a separate orphans' court when it is a matter known to every delegate here that the most important practice before the judges holding our courts of common pleas sitting as orphans' courts are questions arising in the distribution of the estates of decedents. Therefore I was opposed to the principle of the section itself.

I am not, however, here as a dog in the manger, unwilling to afford relief when delegates representing other counties and parts of this Commonwealth come here and say that they must have relief in a

particular direction. I am not willing to say that delegates representing the great city of Philadelphia, the great city of Pittsburg, the large and important county of Luzerne and the important counties of Lancaster and Schuylkill and Berks shall not be allowed the privilege of having a separate orphans' court if the business of those localities actually requires it, if the business of the locality actually interferes with the practice of the common pleas so greatly that it is impossible to transact the business there. But for the smaller counties, comprising a population of forty thousand, fifty thousand, sixty thousand, or seventy-five thousand inhabitants, I do pretend to be of opinion and insist that there shall be no gerrymandering, and no bartering should be allowed to obtain in the Legislature by which an act of Assembly is passed imposing a special orphans' court in those counties; and that is one of the reasons why I am in favor of the proposition offered by the honorable delegate from York, which deprives the Legislature of the power of imposing upon the judges of the court of common pleas or upon separate officials the duty—

The PRESIDENT *pro tem.* The hour of six having arrived, the Convention stands adjourned until to-morrow morning at nine o'clock.

ONE HUNDRED AND THIRTY-SEVENTH DAY.

THURSDAY, July 10, 1873.

The Convention met at 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.

RECONSIDERATION.

Mr. ARMSTRONG. I rise to a question of privilege. I move to reconsider the vote by which the action was taken yesterday on the proposition submitted by Mr. Cuyler. I voted with the majority.

Mr. HARRY WHITE. I hope that will not be done until we get to the judiciary article.

The PRESIDENT *pro tem*. The Chair will suggest to the delegate to withhold his motion until the article is taken up and before the Convention.

Mr. ARMSTRONG. Very well.

LEAVE OF ABSENCE.

Mr. HOWARD asked and obtained leave of absence for a few days for Mr. Beebe, on account of ill health.

INVITATION TO GETTYSBURG.

Mr. CURTIN. Mr. President: I received the following telegram yesterday, which I desire to lay before the Convention, addressed to myself and the distinguished delegate from York (Mr. J. S. Black.)

"Gettysburg offers a suitable hall, desks and chairs, and as good hotel accommodations as in Philadelphia, and our railroad offers free travel. So please come.

"E. HARMAN."

This is in addition to the invitation of the authorities of Gettysburg.

Mr. STANTON. I move that the thanks of the Convention be extended for the invitation.

Mr. TEMPLE. I move that the thanks of the Convention be returned to the person who sent that telegram, and that it be laid on the table.

Mr. COCHRAN. I hope there will be no further notice taken of that communication, for the simple reason that, as I understand it, it proceeds only from an individual. It comes here simply in the form

of a telegraphic dispatch, and I do not see how the Convention can properly take notice of that party. It seems to me that there ought to be no further action taken on the subject.

The PRESIDENT *pro tem*. It is moved that the thanks of the Convention be tendered to the sender of this telegram.

The motion was agreed to.

M'ALLISTER MEMORIAL.

Mr. HAY, from the Committee on Accounts and Expenditures, submitted the following report:

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

That the committee has carefully examined the account of John Sartain, dated June 23, 1873, for engraving portrait and signature of Hugh N. M'Allister, \$77 50; the account of Henry Sartain, for printing five hundred copies of said portrait, \$7 50; and the account of William W. Harding, dated July 7, 1873, for printing five hundred copies of the memorial volume to Mr. M'Allister, \$225.

That the said accounts are all certified by the Committee on Printing and Binding of the Convention, which committee was authorized to have said memorial volume prepared and printed. The total cost of this volume, five hundred copies, three hundred and ten dollars, it is believed is very moderate, and even less than the memorial volume to Col. Wm. Hopkins, and its appearance, printing and binding are very creditable.

The following resolution is accordingly reported:

Resolved, That the accounts above mentioned are hereby approved, and that warrants be issued to William W. Harding for \$225, to John Sartain for \$77 50, and to Henry Sartain for \$7 50 for the payment thereof.

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

PAPER ACCOUNTS.

Mr. HAY. I am also directed by the same committee to submit another report.

The report was read as follows:

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

That it has examined the account of William W. Harding, dated June 27, 1873, for two hundred reams of paper, amounting to \$1,500.

That the contract of said Harding with the Convention required him to furnish paper in such quantities as might be ordered by the Committee on Printing and Binding of the Convention; that the paper mentioned in said account was furnished under the order of the said committee, and the bill approved by them. That the paper has been actually received by the Printer as appears by his receipt.

The following resolution is accordingly reported:

Resolved, That the above mentioned account of William W. Harding for two hundred reams of paper, amounting to \$1,500 is hereby approved, and that a warrant be drawn in his favor for the said sum in payment thereof."

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

THE STATE CAPITAL.

Mr. NILES. Mr. President: In the absence of the chairman of the Committee on the Legislature, (Mr. MacVeagh,) I am directed to submit a report from that committee.

The report was read as follows:

"The Committee on the Legislature, to which was referred the resolution of the delegate from Fayette, (Mr. Kaine,) instructing said committee to consider and report upon the expediency of incorporating a provision in the Constitution locating the capital of the State permanently at Harrisburg, beg leave to report the following section, with the recommendation that it be adopted:

SECTION —. No law changing the present location of the capital of the State at Harrisburg shall be valid until the same shall have been submitted to the people at a general election and ratified and approved by them.

(Signed,) WAYNE MACVEAGH,

Chairman,

In behalf of the Committee.

The PRESIDENT *pro tem*. The report will be laid on the table and ordered to be printed.

Mr. J. PRICE WETHERILL. I give notice that a minority report will be pre-

sented by my colleague (Mr. Dallas.) He is not here this morning, or he would present it.

Mr. KAINE. I believe the President has decided that no minority reports are in order. A minority cannot report an article.

THE JUDICIAL SYSTEM.

Mr. MANN. I move that we proceed to the consideration of the article on the judiciary.

The motion was agreed to, and the Convention resumed the consideration on second reading of the article on the judiciary.

Mr. ARMSTRONG. I now renew my motion to reconsider all the votes on the proposition submitted yesterday by the gentleman from Philadelphia (Mr. Cuyler.)

The PRESIDENT *pro tem*. Only one vote can be reconsidered at a time. The last vote must first be reconsidered.

Mr. ARMSTRONG. I desire to reconsider the motion by which it was voted down, as well as the motion by which "Pittsburg" was inserted instead of "Philadelphia."

Mr. STANTON. I should like to ask the gentlemen from Lycoming if it is the additional section he asks to reconsider.

Mr. ARMSTRONG. The additional section proposed by the gentleman from Philadelphia (Mr. Cuyler.)

Mr. MANN. We refused yesterday to reconsider one of those votes.

Mr. ARMSTRONG. It is very manifest that the occurrences of yesterday were in some degree unfortunate. I cannot suppose for a moment that any member of this Convention intended anything like disrespect or want of courtesy to the gentleman from Philadelphia.

Mr. MANN. I raise the point of order that one of these votes cannot be reconsidered.

The PRESIDENT *pro tem*. The gentleman from Potter raises the question that the Convention refused yesterday to reconsider the vote by which "Pittsburg" was inserted in the stead of "Philadelphia" and that therefore that vote cannot be reconsidered this morning. The Chair believes that the gentleman from Potter is correct in his statement.

Mr. HARRY WHITE. I ask leave to make a statement at this time. I sympathize entirely with what has been said by the delegate from Lycoming with reference to this matter, and I think the shortest way to get rid of the difficulty, and accomplish the desire of all parties,

would be for the Convention to give unanimous consent for the withdrawal of this proposition and for the expunging from the Journal of all proceedings relating thereto. That can be easily done, and I hope unanimous consent will be given. I make a motion to that effect.

Mr. HOWARD. Mr. President: Is this question debatable?

The PRESIDENT *pro tem*. It is not debatable.

Mr. HOWARD. Very well, then; I hope it will not be debated.

The PRESIDENT *pro tem*. The Chair was trying to ascertain whether a motion to reconsider had not been acted upon yesterday. A motion is made that the Convention consent to a withdrawal of the proposition of Mr. Cuyler, and its expunging from the Journal. Will the Convention give unanimous consent?

Unanimous consent was given.

The PRESIDENT *pro tem*. The question is upon the amendment of the gentleman from York (Mr. Cochran) to the twenty-first section.

Mr. COCHRAN. If in order I wish to modify my amendment.

The PRESIDENT *pro tem*. You cannot now modify it.

Mr. COCHRAN. If I cannot modify it, I move to amend it by striking out all after the word "court," in the sixteenth line, to and including the word "court," in the eighteenth line, and inserting these words:

"When there is any dispute about any account filed, or about the distribution of the estate of any decedent in any separate orphans' court, such dispute shall be determined by such court without an auditor, and shall be audited without expense to parties."

This does not change the practical effect of the section in the least, nor does it interfere with the other part of the section, relating to auditing in the city of Philadelphia. This proposition says that whenever a dispute occurs about an account filed or about the distribution of the estate of any decedent in any of the separate orphans' courts, then such dispute shall be determined by the court without an auditor and without expense to the parties. That is to say, wherever there is a separate orphans' court the matter shall be determined without an auditor and without expense to the parties. Where there is no separate orphans' court the matter is not regulated by this amendment, but left to stand on the law

as it now is. It is precisely the same in effect as that I offered yesterday.

Mr. TURRELL. As I understand it, it leaves the matter just as it was left yesterday, and the same objection exists to it that it makes one rule for one part of the State and another rule for another part of the State. Where there are separate orphans' courts, the auditing will be done without expense to parties; where there are not, it will be done at the expense of parties.

Mr. TEMPLE. I should like to hear the amendment to the amendment read.

The PRESIDENT *pro tem*. It will be read.

The CLERK. It is proposed to strike out all after the word "court," in the sixteenth line, to and including the word "court," in the eighteenth line, and to insert as follows:

"Where there is any dispute about any account filed or about the distribution of the estate of any decedent in any separate orphans' court, such dispute shall be determined by such court without an auditor," and then follow the words "without expense to parties," &c.

Mr. ARMSTRONG. Mr. President: It is very difficult to know what the interpretation of the word "dispute," in that connection, would be. It is certainly a word not very familiar, and I think not often used in legal enactments. I should be a little at a loss to know what would be meant by a "dispute." If the section is to be adopted in that way there should be something to make the "dispute" more certain, by saying "in the nature of exceptions," or "when exceptions are filed." But it is worth while to consider that this whole system of auditors is apart from the ordinary exercise of judicial functions. Any matter which is to be audited is a judicial inquiry, and there is no reason why the important matters which are referred to an auditor ought not to go before the court by the same process and in the ordinary mode in which other litigations are pursued. The reference to a master is a matter of convenience, and every lawyer here knows that proceedings in the orphans' court are virtually proceedings in equity, so recognized repeatedly. If, then, a matter of audit should arise upon any estate, the orphans' court charged with the necessity of deciding that question could just as well decide it as they could decide other litigation that might arise. Nor do I see any objection to requiring the court to

pass directly upon those questions. It does not involve the necessity of the judge, in every instance, hearing all the evidence or figuring upon mere matters of account. There are clerical duties which the court can delegate to its clerks, or, in instances requiring it, refer to a master, and without at all impinging upon the principle that the audit shall be without expense to the parties, in the same sense that the trial of any other issue at law or in equity before the court is without expense to the parties.

Mr. HANNA. The gentleman says that matters arising in the distribution may be referred to masters. Now, if that is so, how shall the master be paid?

Mr. ARMSTRONG. I said that it might be referred to a master, but the master designated has official connection with the court and is designated in the section, by which the register is made *ex officio* the clerk of the court, and therefore the master to that extent, and always under the supervision and direction of the court. The section provides for it specifically and in terms and amply.

I think the whole system of auditing by which important questions, which are really of judicial consideration, have been taken by a false and injurious practice and vested in persons outside, who come into court to present their notions on the question, and which must be afterwards passed upon by the court, is of itself a blot upon our judicial system. It is to be noticed that the judicial system of Pennsylvania has been a growth, and it has grown up with its good and with its evil mingled together. This is the first time in the history of Pennsylvania that we have attempted to systematize and organize the judicial system of the State into something like harmony and symmetry, and I think we ought to persist in that attempt. We have had this system of auditing growing and growing until it is an abuse of monstrous proportions in the city, and it is growing every day in the country. Now I believe that the section is right as it stands, and that there is no evil connected with it that a little experience and a little legislation from time to time as needed, will not fully correct, at the same time that it leaves the judicial system of Pennsylvania in harmony with itself and complete. The sooner we blot out this system of independent auditing the better on all accounts.

Mr. BRODHEAD. I think the debate on this point has continued about long enough, and I therefore move the previous question. Otherwise we shall spend another day on this subject.

The PRESIDENT *pro tem*. Eighteen gentlemen must rise to sustain the call for the previous question.

Mr. BEEBE. I suggest to the gentleman to withdraw his motion, inasmuch as no one seems desirous to speak, and we are ready for a vote.

Mr. BRODHEAD. I am afraid if the previous question is not ordered we shall waste another day, mostly by the same parties, on the same subject-matter.

SEVERAL DELEGATES. Let us take a vote on the amendment.

Mr. BRODHEAD. I will withdraw the call in case a vote can be taken.

Mr. BOYD. I object to conditions.

The PRESIDENT *pro tem*. The question is on the proposed amendment of the delegate from York (Mr. Cochran) to his original amendment.

The yeas and nays were required by Mr. Cochran and Mr. Landis, and were as follow, viz:

Y E A S .

Messrs. Achenbach, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Black, Charles A., Buckalew, Carey, Carter, Cochran, Corson, Cronmiller, Curry, Curtin, Davis, De France, Ellis, Fulton, Funck, Gibson, Gilpin, Green, Hall, Horton, Lamberton, Landis, Lawrence, MacConnell, M'Clean, M'Culloch, Patterson, D. W., Patton, Purviance, John N., Reynolds, Rooke, Ross, Smith, H. G., Smith, Henry W., Wetherill, Jno. Price and White, Harry—40.

N A Y S .

Messrs. Alricks, Armstrong, Beebe, Biddle, Bigler, Boyd, Brodhead, Broomall, Brown, Bullitt, Clark, Corbett, Dallas, Darlington, Edwards, Elliott, Guthrie, Hanna, Howard, Kaine, Lear, Lilly, Long, M'Murray, Mann, Mantor, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, Sam'l A., Reed, Andrew, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry and White, David N.—47.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bar-

tholomew, Black, J. S., Bowman, Calvin, Campbell, Cassidy, Church, Collins, Craig, Cuyler, Dodd, Dunning, Ewing, Fell, Finney, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Porter, Read, John R., Runk, Russell, Struthers, White, J. W. F., Woodward, Worrell, Wright and Meredith, *President*—48.

The *PRESIDENT pro tem.* The question recurs on the original amendment of the delegate from York (Mr. Cochran) to insert after the word "court" in the seventeenth line the words "in those counties in which separate orphans' courts shall be established."

Mr. COCHRAN. I wish to make just one remark. There were some gentlemen who voted against the amendment to the amendment under the impression that where separate orphans' courts were established and where there were no exceptions filed, there the court could refer the account to an auditor for action. That was the objection to the amendment to the amendment on the part of several gentlemen. Now, this proposition, it will be observed, is at least clear of that objection. The clause would then read:

"All accounts filed in the register's office and orphans' court, in those counties, in which separate orphans' courts shall be established, shall be audited without expense to the parties."

That would remove entirely the objection that an account to which no exceptions were filed could, in those counties, be still referred to an auditor by the court and the parties put to expense.

Mr. ARMSTRONG. My impression is that when the section was before the Convention before it was so modified in the seventeenth line, that it reads now, "all accounts to which exceptions have been filed." ["No." "No."] I think it was so modified.

Mr. DARLINGTON. I tried to get it in, but it was refused, and the section was not so modified.

The *PRESIDENT pro tem.* That modification was not made.

Mr. ARMSTRONG. Then I am in error in that, and I stand corrected. I now recall that that amendment was rejected upon the ground that it would leave it open to the courts to refer accounts to which no objections were filed. I supposed that the amendment on which we have just voted was the substitute offered by the gentleman from York (Mr. Coch-

ran) for the one just now pending. Doubtless I was in error on that subject, but it involves the same question. I suppose the Convention is ready to vote upon it as involving only the question and no more nor less than that on which we have just voted.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from York (Mr. Cochran.)

Mr. COCHRAN. I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

Mr. M'CLEAN. Does it not require ten members to second the call for the yeas and nays?

The *PRESIDENT pro tem.* It does.

Mr. CORSON. We certainly do not understand this question.

The *PRESIDENT pro tem.* It requires ten members to second the call for the yeas and nays. Ten have not risen to second the call.

Mr. CORSON. I trust that we shall leave this matter of auditors alone. It seems to me that we—

Mr. D. W. PATTERSON. I rise to a question of order. The yeas and nays have been ordered.

The *PRESIDENT pro tem.* Do ten gentlemen rise to second the call for the yeas and nays?

More than ten gentlemen rose, and the yeas and nays were taken with the following result:

YEAS.

—Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Buckalew, Carey, Carter, Cochran, Corson, Cronmiller, Curry, Davis, Ellis, Fulton, Funck, Gilpin, Green, Hall, Horton, Kaine, Lambertson, Landis, Lilly, M'Culloch, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Purviance, John N., Read, John R., Reynolds, Ross, Wetherill, Jno. Price and White, Harry—34.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Barclay, Beebe, Biddle, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Brown, Bullitt, Campbell, Clark, Corbett, Dallas, Darlington, De France, Dunning, Edwards, Elliott, Guthrie, Hanna, Howard, Lawrence, Lear, Long, MacConnell, M'CLean, M'Murray, Mann, Mantor, Newlin, Niles, Parsons, Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Rooke, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stew-

art, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry, White, David N. and White, J. W. F.—56.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Bowman, Calvin, Cassidy, Church, Collins, Craig, Curtin, Cuyler, Dodd, Ewing, Fell, Finney, Gibson, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Porter, Runk, Russell, Smith, H. G., Struthers, Woodward, Worrell, Wright and Meredith, *President*—43.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. M'CLEAN. I desire to so amend this section as to abolish the office of register of wills by striking out, in the first line, down to and including the first four words of the second line.

The *PRESIDENT pro tem.* The words proposed to be stricken out will be read:

The CLERK read as follows:

"A register's office for the probate of wills and granting letters of administration, and."

Mr. M'CLEAN. I can see no necessity for the office of register of wills. I cannot see why all the business of that office cannot as well, and better, be transacted by the orphans' court through the clerk or clerks thereof. Why should all this circuitry, of which every gentleman in the Convention is so well aware, continue to exist? Every one knows that if the settlement of an account goes into the register's office it has to be copied and certified to the office of the orphans' court, and in that way gets into the orphans' court. I would ask gentlemen why the orphans' court cannot take charge of the estate of a decedent from the moment he is dead until the distribution of the estate among those who are entitled to it. Parties are unnecessarily burdened with costs by the existence of these two separate offices. There is no need for their existence, and I hope my proposition will receive the consideration of the Convention, and that the amendment may be adopted. The section as already adopted has abolished the register's court. This is taking one step toward the end at which I am aiming. The register's court has been found to be superfluous and useless. Why not abolish the office of register itself?

Mr. ARMSTRONG. Mr. President: I think it is necessary to retain that office. Gentlemen of the Convention will bear

in mind that there are judicial districts composed of several counties and that it is necessary there should be an office always open in those counties. It is not necessary to discuss it; the matter was discussed before.

Mr. M'CLEAN. I ask the gentleman if there is not a clerk of the orphans' court in every county, and if he might not as well transact the business as the register?

Mr. ARMSTRONG. That would be a distinction without a difference, I think.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Adams (Mr. M'CLean.)

The amendment was rejected.

Mr. HANNA. I move to amend the section in the fifth and sixth lines by striking out the words, "wherein the population shall exceed 150,000 shall, and in any other city or county," so as to read:

"In every city and county the Legislature may establish," &c.

Mr. TEMPLE. That has been voted down.

Mr. ARMSTRONG. That amendment is not now in order.

Mr. SIMPSON. I rise to a point of order. That very amendment has been voted down in the Convention.

The *PRESIDENT pro tem.* The amendment was proposed heretofore and voted down in Convention, and it is therefore not in order now.

Mr. J. M. BAILEY. Mr. President: If the chairman of the Judiciary Committee desires to preserve the entire symmetry of the system, I would suggest to him whether it would not be well to make some provision for the auditing of accounts filed in the court of common pleas. They are just as liable to pass upon the auditing system as those filed in the orphans' court; and if he wants to make this system entirely complete he should make some provision for them. I have no amendment to offer, but I merely suggest it to him.

Mr. ARMSTRONG. I suppose it would be difficult to distinguish as a matter of mere principle in any way that would exclude the accounts suggested; and yet I think it is not judicious to introduce such an amendment in this place and at this time. It pertains to the duties of the common pleas court; and if the system works well under this section, as we believe it will, the Legislature can add that duty at their discretion.

Mr. SIMPSON. An objection to the suggestion of my friend from Huntingdon is this: That in the courts of common pleas there are generally creditors alone interested, who are always vigilant in looking after their interests, while in the orphans' courts it is dead men's estates that are to be settled in which widows and orphans are interested, who are not always able to look after their interests.

Mr. CORSON. Is it in order now to move an amendment to this section?

The PRESIDENT *pro tem.* It is.

Mr. CORSON. I move to strike out all after the word "court," in the sixteenth line.

Mr. MANN. That motion was made yesterday and voted down.

Mr. CORSON. That is the reason I make it to-day. [Laughter.]

The PRESIDENT *pro tem.* The amendment is not in order, having been offered hitherto and voted down.

Mr. CORSON. I would like to know what is the exact amendment before the Convention.

The PRESIDENT *pro tem.* There is no amendment.

Mr. CORSON. Is the question upon the section?

The PRESIDENT *pro tem.* The question is upon the section.

Mr. CORSON. I wish to say just two words. I do trust that this Convention will have the good sense either to adopt some such provision as was proposed this morning by the gentleman from York, or to vote down this section, because we are treading upon very dangerous ground. We cannot undertake to regulate estates by a constitutional provision, and the poor people of the State by this section will be compelled to pay for the auditing of rich men's estates. We cannot afford to do that, and I for one will never agree to a proposition of that kind. I trust the section will be voted down.

The PRESIDENT *pro tem.* The question is on the section.

Mr. HANNA. I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

The section was read as follows:

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 one hundred and fifty 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 fixed salary to be paid as may be provided by law. He shall be 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 the register's office and in the orphans' courts in those counties in which separate orphans' courts shall be established, 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.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Barclay, Beebe, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Campbell, Carey, Carter, Corbett, Curry, Dallas, De France, Dunning, Edwards, Elliott, Ellis, Finney, Guthrie, Horton, Howard, Lamberton, Lilly, Long, MacConnell, M'Murray, Mann, Mantor, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, J. W. F. and Wright—63.

NAYS.

Messrs. Bailey, (Huntingdon,) Black, J. S., Brown, Clark, Cochran, Corson, Cronmiller, Curtin, Darlington, Davis, Funck, Gilpin, Green, Hall, Hanna, Kaine, Landis, Lawrence, Lear, M'CLean, Patterson, D. W., Reed, Andrew, Rey-

nolds, Ross, Smith, Henry W. and White, Harry—26.

So the section was agreed to.

ABSENT—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Bigler, Bowman, Calvin, Cassidy, Church, Collins, Craig, Cuyler, Dodd, Ewing, Fell, Fulton, Gibson, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, M'Culloch, Metzger, Minor, Mitchell, Mott, Porter, Rooke, Runk, Russell, Smith, H. G., Struthers, Woodward, Worrell and Meredith, *President*—44.

MR. PARSONS. I offer an amendment as a new section.

MR. ARMSTRONG. I ask the gentleman to allow me to perfect the phraseology of the eighth section, which I trust may be done by unanimous consent.

MR. PARSONS. Certainly.

MR. ARMSTRONG. In the third line of the eighth section the words "criminal courts" are used. I propose to strike it out and insert the words, "courts of oyer and terminer and the courts of quarter sessions," for the reason that there are certain duties pertaining to the court of quarter sessions which are not technically criminal, and therefore the phraseology should be changed.

The amendment was agreed to.

MR. PARSONS. I now offer the following amendment as a new section:

"Whenever a county shall contain forty thousand five hundred inhabitants it shall be constituted 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 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."

MR. BAER and Mr. Parsons called for the yeas and nays on the amendment, and ten delegates rising to second the call, the yeas and nays were ordered.

MR. ARMSTRONG. This seems to me very much as though it were "Monsieur Tonson come again." I should like the

gentleman who has offered this amendment to indicate to the Convention where in it differs from that which has been voted down.

MR. MANN. I rise to a question of order. The yeas and nays have been ordered, and debate is not in order.

The *PRESIDENT pro tem.* The Chair sustains the point of order.

MR. ARMSTRONG. I rise to a point of order?

The *PRESIDENT pro tem.* What is your question of order?

MR. ARMSTRONG. I inquire of the Chair whether the number forty-five thousand was not voted upon. Forty thousand was, and fifty thousand and fifty-five thousand.

MR. PARSONS. This is forty thousand five hundred.

MR. ARMSTRONG. And that is all the difference?

MR. PARSONS. Yes, sir.

MR. ARMSTRONG. Very well, sir. I suppose it is understood.

The *PRESIDENT pro tem.* The same principle has been voted upon, but not the same number.

The question was taken by yeas and nays, and resulted as follows:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Baer, Beebe, Biddle, Boyd, Brodhead, Brown, Bullitt, Campbell, Carey, Clark, Corbett, Corson, Dallas, Darlington, Davis, De France, Dunning, Edwards, Elliott, Ellis, Finney, Green, Hanna, Hay, Horton, Howard, Kaine, Lamberton, Lear, Long, MacConnell, Mann, Mantor, Newlin, Nfies, Palmer G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Simpson, Smith, H. G., Smith, Wm. H., Stanton, Temple, Turrell, Van Reed, Walker White, Harry, White, J. W. F., Worrell and Wright—58.

NAYS.

Messrs. Armstrong, Baily. (Perry,) Bailey, (Huntingdon,) Barclay, Bigler, Black, Charles A., Black, J. S., Broomall, Buckalew, Carter, Cochran, Cronmiller, Curry, Curtin, Fulton, Funck, Gilpin, Guthrie, Hall, Landis, Lawrence, Lilly, M'Clean, M'Culloch, Patton, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, Henry W., Stewart, Wetherill, J. M., Wetherill, J. Price, Wherry and White, David N.—37.

So the amendment was agreed to.

ABSENT. — Messrs. Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Bowman, Calvin, Cassidy, Church, Collins, Craig, Cuyler, Dodd, Ewing, Fell, Gibson, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Patterson, D. W., Porter, Runk, Russell, Struthers, Woodward and Meredith, *President*—38.

Mr. STEWART. I offer the following as a new section:

"SECTION —. No election to fill a vacancy in any court of record shall be for a longer period than the unexpired term."

Mr. President, the Convention seems to have definitely determined to leave to the Legislature the business of districting the State. Now, the purpose of this amendment is to have all the commissions of the judges expire at the same time, so that when the Legislature does come to district the State judicially it will not be embarrassed by any such consideration as the unexpired terms of judges, but may district the State with such freedom of action as it ought to have when it undertakes a business of this character. I think the amendment ought to commend itself to the judgment of the Convention.

Mr. ARMSTRONG. A section of this importance ought not to pass without consideration. The principle involved in it has been very often considered; and, without being able to speak from the record, my impression is that it is not adopted in any of the States, or, if in any, certainly in very few. It is evident that an appointment for an unexpired term may be for any time greater than two months and any time between two months and the entire length of term. The effect of it will be that men of such character and standing as would adorn the position would refuse to take it for so small a term. There is no advantage in it, and it is inconsistent with the provision which we have already made as to the Supreme Court. Its judges hold their office for the entire term. There is no advantage in this idea unless it be as a mode of laying the ground work for the cumulative vote by having the terms of two or three or more necessarily expire at the same time so as to create the necessity of electing two or three or more at the same time. I may say that the question is one of those which were deliberated upon and passed upon by the Judiciary Committee with

very great care and with a conclusion that it was not a judicious section to adopt.

Mr. ANDREW REED. Mr. President: I am in favor of the section proposed by the member from Franklin. It places the judges in accordance with all the other officers of the State. We elect a Senator for the unexpired term, and so on. It is well known that we cannot legislate a judge out of his office. That has been tried in the district from which the chairman of the Judiciary Committee comes; and if we do not pass this, just see the effect that will be produced. The Legislature will never be free to district the State on account of the different times at which the terms of the judges will expire.

Owing to the development of some parts of the State in wealth or from some other cause, there may be a great increase of population in those parts which will require a districting of the State; and yet there may be a judge there whose term of office will not expire with the rest of the judges of the State. You cannot legislate him out; and there is a bar to the free districting of the State. I can see that it may be a question of great moment, and this will leave the Legislature free every ten years to district the State in accordance with the necessities of population or the judicial business of the people.

Mr. BROOMALL. I desire to say only that this question was fully discussed when the amendment to the Constitution providing for the election of judges came up before the Legislature and before the people. It was then thought advisable that the terms of the judges of the Supreme Court should be adjusted just as this provision requires those of all the judges of the courts of common pleas to be; but the disadvantage of allowing a judge to be elected for so short a time as two or three months under certain circumstances, the disadvantage of allowing such unequal terms to men of equal capacity, was such that whatever conveniences might arise from the plan were waived then, and I believe we have no new lights upon the question that would induce us to try now an experiment which was not considered judicious then. The Committee on the Judiciary debated this question and, I think, were unanimous in concluding that our predecessors in 1850 were right in what they did, and I trust that this Convention will conclude the same thing.

Mr. TURRELL. I cannot see any reason for this amendment. Why should

we limit the term of a man who goes into a president judgeship simply because his predecessor's term has been shortened by his decease? What reason is there in that for shortening the term of the successor? If you want to elect a good man, a competent lawyer learned in the law, he would often be willing to take the office for a full term when he would not accept it for a year or a few months. Therefore there is no reason in the case. There is no reason why we should not elect every man to a full term on the bench as well as his predecessors. This section is founded on a fallacy.

MR. ANDREW REED. I would move to amend the amendment by making it apply only to judges of the court of common pleas and not to the Supreme Court.

MR. STEWART. I accept that modification.

MR. TURRELL. Then I wish to say further that there might be some possible reason for such an amendment, where the court is constituted as the Supreme judges are, all going out at different periods, so as to keep the equality between them in their time of service. But the president judges of the courts of common pleas are not so constituted; they do not start at one time; and therefore the reason for this section, as far as they are concerned, does not exist.

MR. SIMPSON. If I am not very much mistaken in the article reported by the Committee on Suffrage, Election and Representation, there is a section which provides that all vacancies in the offices of the State shall be filled for the unexpired term; and if I am not mistaken in that it settles this whole question, and this section is unnecessary.

MR. CAMPBELL. Allow me to explain; that section was reported by the Committee on Suffrage, Election and Representation, but was voted down when the report of that committee was considered in committee of the whole, with the intention of taking it up again after the other reports had been gone through with.

MR. SIMPSON. Then I am to understand that the section was voted down.

MR. CAMPBELL. It was voted down temporarily.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin (Mr. Stewart.)

The amendment was rejected, the ayes being twenty-four, less than a majority of a quorum.

MR. ELLIS. I offer the following amendment, to come in as a new section:

SECTION —. The Legislature shall not create any court, other than those expressly authorized in the Constitution, with civil jurisdiction in cases exceeding \$300, or criminal jurisdiction and powers in crimes the punishment of which exceeds a fine of \$100 or imprisonment for thirty days.

I will not detain the Convention with any lengthened remarks, but simply desire to say that this restriction is the substance of the first section of this article and what the committee itself reported to the Convention, with a slight difference in limiting the power of the Legislature to create criminal courts. We should not have high courts of any other character or nature than constitutional courts. Wherever the Legislature has undertaken to create other courts the experiment has in almost every instance been a failure. During our experience of one hundred years there has not been one instance in which a high court was created by the Legislature that it was not a failure. It may be answered that the district court of Philadelphia and that of Pittsburg was not a failure. Measurably they were not, but still, notwithstanding these courts have served a useful purpose, the present Convention have determined to do away with them; and the fact that the district court of Philadelphia had equity powers one year and the next year had not equity powers illustrates that these courts, though performing high functions, have been at the beck and nod of the Legislature at all times. In order that we should preserve the balance of judicial power in the Commonwealth the judiciary should be as independent as possible; and under the present system, if we allow it to continue, the Legislature will have the power to dot the whole State with legislative courts superceding the powers and jurisdictions of the constitutional courts. I shall not urge the matter further than this. It ought to be evident to the judgment of this Convention that such a provision ought to be established in the Constitution.

MR. ARMSTRONG. The section places a restriction on the power of the Legislature which under the Constitution, as we are now framing it, I think would not be judicious. It is demonstrated beyond all doubt that the Convention will not relieve the Supreme Court in any other manner or to any other extent than it has already

done, and particularly upon the ground that the Constitution leaves it in the power of the Legislature to furnish relief if it shall become necessary. This section would be an unnecessary restriction, whilst all that I believe to be necessary to be done is already covered by the section to which I have referred.

It is the fifth section, and provides:

"That the Legislature is hereby prohibited from creating other courts to exercise the power vested in the Constitution in the said courts of common pleas and orphans court."

The gentleman now proposes to extend this so as to take in criminal cases, and that is his point. I do not see that there is any necessity for it. The only instance in which such power has been exercised is in the creation of a criminal court having jurisdiction in Schuylkill, Lebanon and Dauphin.

Mr. ELLIS. I would ask the gentleman a question. Does he not know that a few years ago the Legislature created, in the city of Philadelphia, courts of exclusive criminal jurisdiction which lasted a year or two, and were abolished?

Mr. ARMSTRONG. Such was the case, but the good sense of the Legislature put those courts down, and they have never been renewed except in the instance referred to, and in that particular case, I believe, with eminent advantage to the suitors, particularly of Schuylkill county. I see no necessity whatever for this section.

The PRESIDENT *pro tem*. The question is upon agreeing to the amendment.

Mr. ELLIS. On that I call for the yeas and nays.

Mr. ROSS. I second the call.

The PRESIDENT *pro tem*. The yeas and nays have been demanded, and the Clerk will proceed with the call.

Mr. DARLINGTON. I rise to a question of order. This being not a section reported by the Committee on the Judiciary, but an amendment moved by the gentleman from Schuylkill, it requires ten gentlemen to second the call for the yeas and nays.

The PRESIDENT *pro tem*. Do ten gentlemen rise to second the call for the yeas and nays?

More than ten gentlemen rose.

The PRESIDENT *pro tem*. The call for the yeas and nays is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Alricks, Baer, Bailey, (Huntingdon,) Boyd, Brodhead, Brown, Buckalew, Campbell, Corbett, Curry, Dallas, Dunning, Elliott, Ellis, Gibson, Guthrie, Hall, Hay, Lamberton, Lear, M'Murray, Metzger, Niles, Palmer, H. W., Parsons, Patton, Purman, Reed, Andrew, Ross, Smith, H. G., Temple, Turrell, Wetherill, J. M. and Worrell—34.

N A Y S .

Messrs. Addicks, Armstrong, Baily, (Perry,) Baker, Barclay, Beebe, Biddle, Bigler, Black, Chas. A., Broomall, Bullitt, Calvin, Carey, Carter, Cochran, Corson, Cronmiller, Cuyler, Darlington, Davis, De France, Edwards, Ewing, Finney, Fulton, Funck, Gilpin, Green, Hanna, Horton, Howard, Kaine, Knight, Landis, Lawrence, Lilly, Long, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, Jno. N., Purviance, Samuel A., Reynolds, Rooke, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Van Reed, Walker, Wetherill, John Price, White, David N., White, J. W. F. and Wright—62.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Ainey, Andrews, Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Cassidy, Church, Clark, Collins, Craig, Curtin, Dodd, Fell, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Littleton, MacVeagh, M'Camant, Minor, Mitchell, Mott, Porter, Pughe, Read, John R., Runk, Russell, Struthers, Wherry, White, Harry, Woodward and Meredith, *President*—37.

Mr. KAINE. I move to reconsider the vote by which a section was adopted to this article, yesterday, providing that the Legislature may abolish the office of associate judges.

Mr. EDWARDS. I second the motion.

The PRESIDENT *pro tem*. Did both gentlemen vote in the affirmative.

Mr. KAINE. The yeas and nays were not taken.

Mr. STANTON. I would suggest that the whole matter be referred back to the Judiciary Committee. [Laughter.] We are amending, striking out and inserting, and it had better be recommitted.

The PRESIDENT *pro tem*. The question is on the motion to reconsider, made by the delegate from Fayette.

Mr. KAINE. I call for the yeas and nays.

Mr. HANNA. I second the call.

The PRESIDENT *pro tem*. The section which it is proposed to reconsider will be read.

The Clerk read the section as follows:

SECTION —. "The Legislature shall have authority to abolish the office of associate judges after the term of office of the present incumbent shall have expired."

Mr. COCHRAN. I do not know whether it would be in order, but I should like to have the gentleman from Fayette permitted to state his object in moving a reconsideration.

The PRESIDENT *pro tem*. That is not in order. The yeas and nays have been ordered, and the Clerk will call the roll.

The question was taken by yeas and nays with the following result:

Y E A S.

Messrs. Addicks, Baily, (Perry,) Bailey, (Huntingdon,) Black, J. S., Brodhead, Broomall, Buckalew, Carey, Clark, Curry, Curtin, Darlington, Davis, De France, Edwards, Elliott, Ellis, Gibson, Green, Hanna, Horton, Kaine, Lamberton, Lilly, Long, Mann, Patterson, T. H. B., Read, John R., Ross, Sharpe, Smith, H. G., Wetherill, John Price, White, David N., White, Harry, White, J. W. F. and Wright—36.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baker, Barclay, Biddle, Bigler, Black, Charles A., Boyd, Brown, Bullitt, Calvin, Campbell, Carter, Corbett, Corson, Cronmiller, Dallas, Dunning, Ewing, Fulton, Funk, Gilpin, Guthrie, Hall, Hay, Howard, Knight, Landis, Lawrence, Lear, MacConnell, M'Clean, M'Culloch, M'Murray, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Temple, Turrell, VanReed, Walker, Wetherill, J. M., Wherry and Worrell—60.

So the motion to reconsider was not agreed to.

ABSENT.—Messrs. Ainey, Andrews, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Church, Cochran, Collins, Craig, Cuyler, Dodd, Fell, Finney, Harvey, Hazzard, Hemphill, Heverin,

Hunsicker, Littleton, MacVeagh, M'Camant, Mantor, Metzger, Minor, Mitchell, Mott, Niles, Palmer, G. W. Porter, Runk, Russell, Struthers, Woodward and Meredith, *President*—37.

Mr. ARMSTRONG. Yesterday I called the attention of the Convention to the fact in reference to a clause in the fifth section, which will be found on the third page, that the position in which it stands renders it doubtful, whether it is not limited to the cities of Philadelphia and Pittsburg, which is not the intention of the Convention. I then moved to transpose the clause to the end of the twenty-fifth section. Objection was made by the gentleman from Schuylkill (Mr. Ellis) and the gentleman from Indiana (Mr. Harry White.) Both of those gentlemen inform me that they have no further objection, and the gentleman from Indiana that he objected under a misconception of the proposition. I now move, and I trust it will be done by unanimous consent, to transpose to the end of the twenty-fifth section the clause which I shall ask the Clerk to read. Before it is read I will call the attention of the Convention to the language as it stands now in the fifth section:

"And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts."

I propose to transfer that to the end of the twenty-fifth section, striking it out in the fifth.

The CLERK. The numbers of the sections have been changed. At the end of the section beginning "All laws relating to courts shall be of general and uniform operation," it is proposed to transfer from the fifth section the following clause:

"And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts."

The PRESIDENT *pro tem*. Will the Convention unanimously agree to this transposition? The Chair hears no objection and it is agreed to.

Mr. BUCKALEW. This is a matter of arrangement and detail, and I desire to call attention to the apparent inconsistency between this proposed addition to the twenty-fifth section and the prior section, in which we provide expressly that the Legislature shall or may make two orphans' courts in various parts of

the State. It seems to me that that section and this would be inconsistent as far as the orphans' courts are concerned.

Mr. ARMSTRONG. The effect of it, I will state to the Convention, is simply to prevent the Legislature from vesting the same powers in other courts. It does not interfere at all with the enlarging of the powers either of the common pleas or orphans' courts, and they may make more courts of the same kind; but it prohibits them from creating Nicholson courts or any other anomaly of that kind.

Mr. BUCKALEW. I am not particular about it if the gentleman is satisfied that he has all the sections harmonious.

Mr. ARMSTRONG. I think so.

Mr. HARRY WHITE. Yesterday I made opposition to this proposition under a misapprehension.

The PRESIDENT *pro tem*. The question has been disposed of and the transposition made.

Mr. CORSON. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. BUCKALEW. I have an amendment which I have attempted to offer about five times. I submit that the reference to the Committee on Revision and Adjustment must be of the entire article—

The PRESIDENT *pro tem*. It is of the entire article.

Mr. BUCKALEW. And as long as the article is not finished and the question submitted upon transcribing it to third reading, the motion is not in order. Heretofore such a motion has never been received until the question of ordering the article to third reading has been put.

Mr. ARMSTRONG. I trust the gentleman will be permitted to offer his amendment.

The PRESIDENT *pro tem*. The Chair supposed that all the proposed new sections had been offered.

Mr. BUCKALEW. I desire to offer an amendment as a new section.

Mr. CORSON. I made a motion, and I suppose that motion will have to be voted upon.

The PRESIDENT *pro tem*. The Chair must receive the amendment. It will be read.

Mr. MANN. I should like to make an inquiry. My inquiry is whether it will be possible for the majority of this body ever to dispose of this article?

The PRESIDENT *pro tem*. They can do so by ordering the previous question.

The amendment of the delegate from Columbia will be read.

The CLERK read as follows:

"SEC. —. The commissions of all common pleas judges learned in the law, in judicial districts containing less than one hundred thousand inhabitants, shall expire with the year 1883, and every tenth year thereafter. Within ten years after the organization of the General Assembly, at the session next prior to the expiration of the judicial terms aforesaid, the two Houses shall meet together in joint convention and by open vote appoint ten commissioners, who shall have power to divide the State into judicial districts, assigning to each one or more judges, as may be required, such apportionment to remain unchanged for a term of ten years. In choosing said commissioners each member of the joint convention shall vote for not more than five persons, and the ten highest in vote shall be elected. No city or county shall be divided in the formation of districts, and no district shall be formed to elect more than two law judges, unless in the case of a county containing over one hundred thousand inhabitants. The said commissioners shall be duly sworn, (or affirmed,) and shall be ineligible to election to the office of judge under an apportionment made by them; and any such apportionment shall be agreed to by at least seven commissioners."

Mr. BUCKALEW. Mr. President: I have been a participant in the debate upon various questions regarding the organization of the courts of the State, but have proposed nothing myself until this moment.

Now, let us look back at what we have done, or rather what we have not done. A proposition to establish a circuit court was elaborately debated and voted down. A proposition to divide the Supreme Court into two working bodies was also debated and voted down. A proposition in several forms for making plural common pleas districts was also considered and voted down. A proposition to make most of the counties of the State single judicial districts was rejected a few days since, and this morning an amendment was agreed to with reference to the arrangement of single county districts, which has but slight operation. Therefore we are now approaching the end of our consideration of this article without having done anything material with regard to the organization

of the *nisi prius* courts of the State presided over by law judges, except that we have increased the judges in Philadelphia, Allegheny and Luzerne, an orphan's court judge in each, and two common pleas judges in Philadelphia in addition to those which now exist.

Now, the question is upon the Convention, shall you leave this tangled system of *nisi prius* courts and *nisi prius* districts in the State as it is at present? Will you leave this confused system to such imperfect action and regulation as the Legislature of the State can give to it under the terms of the Constitution? I hope not. I hope that to this abundant confusion you will restore order, or will at least provide that at some future time—I do not care very much whether it is in the year 1883, or 1890, or at the commencement of the next century—some time or other order and regularity shall be restored to our system of courts of record of original jurisdiction. Sir, the only mode by which you can reach that object is to provide that all the districts of the State, (save a few of the larger ones, which will always of course be separate,) where you are forced to combine counties, shall at one and the same time be under the hand of some proper apportioning power by which districts can be formed and judges assigned to them.

The difficulty, the insurmountable difficulty, now encountered by the Legislature, is that the commissions of the common pleas judges expire at different times in adjoining districts. There is no regularity or system with regard to their expiration. You cannot make new districts, you cannot reorganize districts without turning judges out of office—always a thankless task to the law-making power, and repugnant to that sense of justice which is common among our people.

Now, sir, the amendment which I have offered is double, and I shall ask for a division in voting upon it. The first branch of it is, that with the year 1883, that is, at the end of it, and at the expiration of every period of ten years thereafter, the commissions of the common pleas law judges in districts composed of less than one hundred thousand inhabitants shall expire. If you adopt that, and it stands alone, the result will be that the Legislature every tenth year can arrange, reorganize, equalize the judicial districts of the State. With the year 1883 you will have commenced a new and orderly sys-

tem which will adapt itself to the necessities of our people in all future time.

The second branch of the amendment provides that these districts shall be made by a commission of apportionment selected by the Legislature itself in a fair and impartial manner, so as to secure a tribunal that will perform this duty with unquestionable fidelity. They are to be placed under oath, the ordinary oath of office that we have already provided (and a very stringent one) in the Constitution, and the members of that commission are not to be eligible to election to the office of law judge under any apportionment which they may make; and then it is provided that no district shall have assigned to it more than two law judges, unless in case of counties that have more than one hundred thousand inhabitants.

The practical result of the arrangement provided is this: Philadelphia, Allegheny, Luzerne, Schuylkill, Lancaster, and Berks as at present they exhibit populations, will be separate districts, and will remain such for all future time, and other counties that shall rise above 100,000 inhabitants of necessity will constitute separate districts, and in those districts the number of judges may be more than two; but as to districts under 100,000 inhabitants, where you are compelled to unite counties, as you will for two-thirds of the counties of the State, they will be in a reasonable, regular, orderly and proper manner. I prefer to have them made by this proposed board of apportionment, the plan of which I have copied mostly from the plan presented by the gentleman from Philadelphia (Mr. Simpson) in reference to another provision in the Constitution; but at all events I beg members of the Convention to pass the first branch of the amendment, whether they accept the second branch of the amendment or not.

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

MR. BUCKALEW. Certainly.

MR. FUNCK. It is whether there is any dissatisfaction with the judicial districts as now constituted?

MR. BUCKALEW. Certainly, a great deal.

MR. FUNCK. Where?

MR. BUCKALEW. Westmoreland, Indiana and Armstrong have been complaining for years. Their complaints have been echoing in both Houses of the Legislature year after year.

Mr. FUNCK. We know of none in the district I come from.

Mr. BUCKALEW. That is but an illustration of a great many cases. The Tloga district has a second law judge there, supposed to be about as necessary as a fifth wheel to a wagon. There is a second law judge in Bradford county, who, I insist, is altogether unnecessary. We have been patching this system in the Legislature, worrying over it, and not knowing what to do with it, giving assistant law judges here and there as best we could and stumbling along. Any man who has served in the Legislature during the last ten years does not need any argument from me to show that some change of this sort is necessary to extricate the Legislature from difficulty.

Well, now, what the Legislature does on this subject is done hap-hazard; it is done under pressure; it is done according to the popularity of some particular members who want something done for their districts. There is no system of regularity.

The PRESIDENT *pro tem*. The delegate's time has expired.

Mr. BROOMALL. Mr. President: I am surprised that the gentleman from Columbia should introduce at this late period of our proceedings a provision as complicated and as new as that which has just been read. However proper it might have been two months ago or three months ago to be submitted to a proper committee and to be digested and examined, I submit that it is too late to take up such a proposition now. I think there are grave defects in it. I think there may probably be some good in it. But the point that I make is this, that in the position in which we now find ourselves we shall do damage by going into a proposition so new and so complicated as that; and I hope that if the gentleman wants it considered he will even, late as it is, introduce it and have it referred to a select committee if he chooses, or to the Judiciary Committee if he choose, or any other proper committee, and have it fairly digested and considered before it is brought here. Certain I am that here it will not be considered, but will either be adopted or rejected without examination and without that consideration which it probably deserves, certainly without that consideration which the ability and position of the gentleman who offers it deserve to have for any measure that he offers.

I hope that it will be now voted down and if introduced will be introduced regularly and referred.

Mr. HOWARD. Mr. President: If I understand this proposition I do not know that there is anything very new in it. I think it is the cumulative plan for districting the State, and then the cumulative plan for electing afterwards, though it is perhaps in different language from that in which that plan has been before submitted, and I supposed we had got about ready for a vote. After working upon this article until I supposed I saw the last end of the tail, the delegate from Columbia, according to his habit, draws from that capacious pocket of his, that is chock full—and I do not believe it is half empty now—this long section. After we supposed we had got through with a section or article he always comes in with his long string and tries to tie it to the end, and we have sometimes to renew the fight for a week. He has a perfect right to do it, but it is a peculiar way of doing things that an important section of this description and this length shall be kept back in the breast of that gentleman and brought forward at this time and thrust upon the Convention, not even printed.

It seems to me it ought to be disposed of summarily, and for that purpose I call for the previous question, and I hope that the call will be sustained and that we shall dispose of it one way or the other.

The PRESIDENT *pro tem*. Is the call for the previous question sustained?

Mr. ARMSTRONG. I think we ought not probably to spend much time upon this complicated question and one which this Convention cannot understand in its bearings upon the hasty consideration which they can now give it. It occurs to me as an insuperable objection to it in view of the fact that we have already voted not to allow commissions.

Mr. HOWARD. I rise to a point of order. Is the question debatable whether we shall have the previous question? I called the previous question. Is that debatable?

The PRESIDENT *pro tem*. It is not debatable; but eighteen gentlemen did not rise to second the call and therefore the call for the previous question was not sustained. The gentleman from Lycoming is now entitled to the floor.

Mr. ARMSTRONG. I do not intend to insist on the floor because I should have been done by this time if not inter-

rupted. I only wanted to finish my sentence. I was saying that we have already decided that vacancies shall not be filled for unexpired terms. It follows, of course, that vacancies will be filled for the full terms, and there never will come a time when the commissions will all expire at the same time, and under the proposition now suggested it would happen that judges throughout the State would have their commissioners summarily cut off, some in ten years, some in nine, and so on clear down to one year or less. In that view of the case, it is wholly impracticable and I think ought not to be adopted.

Mr. H. W. PALMER. It seems to be evident that the Convention is not in a temper of mind to consider this proposition further, and because I am desirous of giving to a proposition emanating from this source the consideration due to it, I move that this article be now referred to the Committee on Revision and Adjustment, and I understand the parliamentary effect of that motion will be to carry this amendment with it, and it can be reported back by the Committee on Revision and Adjustment printed, and in such shape that the Convention can understand it.

The PRESIDENT *pro tem*. The Chair does not understand any such parliamentary rule as that.

Mr. H. W. PALMER. That, I think, is the parliamentary rule.

The PRESIDENT *pro tem*. The Chair does not understand how the Committee on Revision and Adjustment has anything to do except with what passes the House.

Mr. BUCKALEW. Mr. President: I suggest—

The PRESIDENT *pro tem*. The delegate has spoken once.

Mr. BUCKALEW. I am not going to speak, but I rise to suggest that our practice has been to refer a proposition to a committee with instructions to consider and report; but at this stage I agree with the Chair on the question of order.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Columbia.

Mr. BUCKALEW. I ask for the division I indicated.

The PRESIDENT *pro tem*. What is the first division?

Mr. BUCKALEW. At the end of the first clause.

The PRESIDENT *pro tem*. The first division will be read.

The CLERK read as follows:

"The commissions of all common pleas judges learned in the law in judicial districts containing less than one hundred thousand inhabitants shall expire with the year 1883, and every tenth year thereafter."

Mr. BOYD. I call for the yeas and nays.

Mr. BUCKALEW. I second the call.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates.

Mr. DARLINGTON. It requires ten.

The PRESIDENT *pro tem*. Gentlemen seconding the call will rise.

Ten delegates rose to second the call; and the yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Bailly, (Perry,) Bailey, (Huntingdon,) Barelay, Boyd, Brodhead, Buckalew, Campbell, Cassidy, Curtin, Dallas, De France, Dunning, Ellis, Fulton, Gibson, Gilpin, Kaine, Lilly, Long, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patton, Read, John R., Sharpe, Smith, H. G., Stewart, Van Reed Wherry and Wright—32.

NAYS.

Messrs. Addicks, Alricks, Armstrong, Baer, Baker, Biddle, Bigler, Black, Charles A., Black, J. S., Broomall, Brown, Bullitt, Calvin, Carey, Carter, Clark, Corbett, Corson, Cronmiller, Curry, Cuyler, Darlington, Davis, Edwards, Elliott, Ewing, Fell, Finney, Funk, Green, Guthrie, Hanna, Hay, Horton, Howard, Knight, Landis, Lawrence, Littleton, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Turrell, Walker, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Worrell—63.

So the first division of the amendment was not agreed to.

ABSENT.—Messrs. Ainey, Andrews, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Church, Cochran, Collins, Craig, Dodd, Hall, Harvey, Hazzard, Hemphill, Hoverin, Hunsicker, Lamberton, Lear, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Porter, Pughe, Runk, Russell, Struthers, Temple, Wetherill, J. M., Woodward and Meredith, President—36.

Mr. BUCKALEW. I do not ask a vote on the second branch, except a formal re-ec-tion.

The PRESIDENT *pro tem.* The second division is before the Convention.

The division was rejected.

Mr. ARMSTRONG. If there be no further amendments to offer, I now move to refer the article to the Committee on Revision and adjustment.

Mr. SHARPE. I have an amendment to offer.

Mr. ARMSTRONG. Then I will wait.

Mr. SHARPE. I offer the following amendment, to come in as a new section:

"SECTION —. The Supreme Court shall sit in banc for the hearing of causes that come up by writs of error or appeal in the city of Harrisburg, but may for adequate reasons adjourn its sessions for a single term, or less than a term, to any other suitable and convenient place."

Mr. ALRICKS. On that I call for the yeas and nays.

Mr. STEWART. I second the call.

The PRESIDENT *pro tem.* Is the call sustained?

More than ten members rose.

The PRESIDENT *pro tem.* The call is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken, and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Calvin, Cochran, Curry, Curtin, Dunning, Finney, Funck, Gibson, Gilpin, Kane, Land s, Lilly, M'Clean, M'Culloch, M'Murray, Metzger, Palmer, G. W., Palmer, H. W., Patterson, D. W., Reed, Andrew, Reynolds, Sharpe, Smith, Henry W., Stewart, Van Reed, Walker, Wetherill, J. M., Wherry, White, Harry and Wright—36.

NAYS.

Messrs. Addicks, Armstrong, Baker, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomail, Brown, Buckalew, Bullitt, Campbell, Carey, Cassidy, Clark, Corbett, Corsen, Cronmiller, Cuyler, Dallas, Darlington, Davis, De France, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Green, Guthrie, Hall, Hanna, Hay, Horton, Howard, Knight, Lawrence, Lear, Littleton, Long, Mann, Mantor, Niles, Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Ross,

Simpson, Smith, William H., Stanton Turrell, Wetherill, John Price, White, David N., White, J. W. F. and Worrell—62.

So the amendment was rejected.

ABSENT. — Messrs. Ainey, Andrews, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Carter, Church, Collins, Craig, Dodd, Harvey, Hazzard, Hemphill, Haverin, Hunsicker, Lamberton, MacConnell, MacVeagh, M'Camant, Minor, Mitchell, Mott, Newlin, Parsons, Porter, Pughe, Runk, Russell, Smith, H. G., Struthers, Temple, Woodward, and Meredith, *President*—35.

Mr. ARMSTRONG. I now move that the article be engrossed and referred to the Committee on Revision and Adjustment.

The motion was agreed to.

THE STATE CAPITAL.

Mr. DALLAS. I ask leave to offer at this time a minority report from the Committee on Legislature.

Leave was granted, and the minority report was read as follows:

The undersigned, members of the Committee on the Legislature, respectfully dissent from the report of the majority of the committee upon the subject of the location of the capital of the State, and respectfully recommend that the word "Philadelphia" should be substituted for "Harrisburg" where it occurs in the section which accompanies said report of the majority of said committee.

GEO. M. DALLAS,

JNO. PRICE WETHERILL.

The PRESIDENT *pro tem.* The minority report will lie on the table.

RAILROADS AND CANALS.

Mr. COCHRAN. I move that the Convention proceed to the second reading and consideration of the article on Railroads and Canals reported from the committee of the whole.

The motion was agreed to; and the Convention proceeded to the consideration on second reading of the article (No. 17) "On Railroad and Canals."

The PRESIDENT *pro tem.* The first section of the article will be read.

The CLERK read as follows:

SECTION 1. Any individual, company or corporation organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad, and no discrimination shall be made in passenger

and freight tolls and tariffs on persons or property passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination. The Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights.

MR. T. H. B. PATTERSON. I move the following amendment to the first section, to come in in the fourth line after the word "railroad," "and may pass its cars, empty or loaded, over such other railroad."

I will just state to the Convention that this is an amendment which covers about one line and includes section fourteen, which was adopted and reported by the committee of the whole. Section fourteen, as we find it in this report, is, I think, materially included in this one line of the amendment that I have proposed and I have offered it with the consent of the delegate from Fayette, (Mr. Kaine,) who moved section fourteen as an amendment to the report of the Committee on Railroads and Canals. I do this in order to abbreviate our work, and I ask the delegate from Fayette if this is not satisfactory and does not cover the ground.

MR. LILLY. I think this amendment ought not to be put into this section, and I think the last section ought to be voted down for this reason: Cars may be brought from one road to another in entirely unfit condition to be passed over that road. This may do an immense deal of damage, may cause a great deal of difficulty and destruction of property. My experience upon this subject, and I have had something to do with railroads for the past thirty-five years, brings me strongly to the conclusion that it is impossible to carry out any such provision as is here contemplated. It is not at all practicable and ought not to be entertained. Different roads may be of different gauge and a physical impossibility be thus added to the objection which I have already raised. I think the amendment should be by all means voted down. It has no place in a Constitution. It is entirely impracticable and should not be tolerated, and I hope the good sense of the Convention will see this matter as I do. Let us vote the amendment down here, and then when the fourteenth section comes up for consideration, let us vote that out.

MR. BIGLER. Mr. President: It seems to me that this first section requires

grave consideration at the hands of the Convention. If we propose that the Legislature shall pass a general free railroad law, we ought to do that in the most distinct terms, and do it at length. For my own part I think it is much better than what is attempted in the section before us, and on that I desire to have the sense of the Convention. I have prepared an amendment to supercede this first section, and indeed it would supercede a number of the sections in the article, and I shall submit that as an amendment to the amendment, proposing to strike out the amendment, together with the section, and insert that which I send to the desk to be read.

The CLERK read as follows:

1. The Legislature, at its first meeting after the adoption of this Constitution, shall enact a general railroad law, open to the use of all persons or companies who may see proper to accept and comply with its provisions, based on and embodying the principles hereinafter set forth, and which law shall be so constructed as to embrace within its operation, as far as practicable, railroad corporations heretofore created.

2. Railroad corporations may intersect, connect and cross their respective roads, having due regard to the safety and convenience of the public. They shall receive from each other and make provision for the prompt transmission of cars, whether empty or loaded, from one road to another; and their charge for the transportation of passengers and tonnage over their respective roads per mile shall be the same, except that a reasonable discrimination may be made because of difference in the original cost and in the grades and curvatures of their several roads. The said general law shall provide for settling differences that may arise under this section.

3. Railroad corporations shall have the right to construct, equip and operate railroads between the points named in their respective charters, and shall have the right to construct engines, cars and all other machinery and equipage used on their roads, and they shall be common carriers; but they shall engage in no other business, and shall have no right to hold lands, real estate, freehold or leasehold, except to the extent necessary to the construction, equipment and effective working of their respective roads.

4. Railroads shall be public highways on which all individuals, companies, cor.

porations and associations shall have the right to have persons and tonnage transported thereon, and in fixing the charges for such transportation equal rates per mile, to all, shall be the general rule; but a reasonable discrimination may be made between passengers transported fifty miles and a less distance, as compared with those transported a greater distance; and provision may be made for annual or commutation tickets for passengers; and so, also, in fixing the rates on tonnage, a reasonable discrimination may be made between the rates on roads or parts of roads of heavy grades and short curvatures as compared with the charges on roads or parts of roads of better characteristics, and between different kinds of tonnage; and such corporations as may transport tonnage from other States through this shall make no unjust discrimination in their charges, against tonnage shipped within as compared with tonnage shipped without the State, and the said general law shall protect the public against all such unjust discriminations.

5. Railroad corporations may hold the stock and bonds of each other, and to make a longer road, in the direction of the connecting roads, may consolidate; but they shall not hold the stock or bonds of other corporations; nor shall any railroad corporation hold a controlling interest in the stock or bonds of another railroad corporation owning or operating a competing line of road. The purpose of this section being to maintain free competition between railroads, its spirit shall be effectively carried out in the details of the general law hereinbefore provided for.

6. Railroad corporations shall not take or appropriate or damage private property without first making compensation or giving ample security for the same; but in ascertaining the value of the property and the amount of the damages by a jury or in court, the direct and indirect benefits of the railroad to the owner or owners of the property taken or damaged shall be considered in mitigation of the amount to be paid.

7. The property of railroad corporations, except the road-bed, shall be liable to taxation the same as the property of other corporations, and the Legislature shall not release this liability.

8. Companies composed in part or in whole of officers and managers of a railroad corporation, shall have no right to transport tonnage over the roads with which said officers and managers are con-

nected without the consent of the holders of a majority of the stock of such corporations; nor shall they be charged lower rates for transportation, or be furnished greater facilities than other person or companies engaged in the same business.

9. It shall be the duty of the Legislature, in addition to enacting the principles of the foregoing article into a general law, to provide also for the construction and connection of lateral railroads, not exceeding twenty miles in length, which may be constructed by mining and manufacturing companies to convey their own products to market.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Clearfield (Mr. Bigler) to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson.)

Mr. J. PRICE WETHERILL. I rise to a point of order. It seems to me that is rather a lengthy amendment to this section and hardly in order. I merely throw out the suggestion that for an amendment to section one it is rather long, and it seems to me that instead of being an amendment to a section it is an amendment to the entire article. It is an entire scheme by itself, and it is virtually impossible for this Convention to properly deliberate upon an article of that sort as offered as an amendment to the section. Therefore I raise the point of order that it is not really an amendment, but that to be properly considered we should resolve ourselves into committee of the whole.

The PRESIDENT *pro tem.* The Chair cannot sustain the point of order. If adopted this certainly will supercede the greater part of the article; but that is not a question of order for the Chair.

Mr. CAMPBELL. I rise to a point of order that it is not an amendment to the amendment. There is an amendment pending to the section now.

The PRESIDENT *pro tem.* There is more in the point of order made by the gentleman from Philadelphia (Mr. Campbell.) This is hardly an amendment to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson.) It is more properly an amendment to the section.

Mr. BIGLER. If gentlemen will hear me for a very few minutes they will discover—

The PRESIDENT *pro tem.* The Chair will state that when the vote is taken on the amendment of the delegate from Al-

legheny, whether favorable or unfavorable, then the amendment of the gentleman from Clearfield will properly be in order.

Mr. BIGLER. Mr. President: I shall shape this business in any way to get a full and complete consideration of this subject. I regard it as of great importance.

Mr. CAMPBELL. Was not my point of order sustained?

The PRESIDENT *pro tem*. The point of order taken by the gentleman from Philadelphia was sustained.

Mr. CAMPBELL. The question, then, is on the amendment of the gentleman from Allegheny.

The PRESIDENT *pro tem*. That is the question.

Mr. BIGLER. The question is on the amendment; I understood the point of order; but I believe I have the floor.

The PRESIDENT *pro tem*. The gentleman from Clearfield has the floor.

Mr. BIGLER. And it is due that I should explain what I intended. This proposition of mine has been in print for some time, but I did not circulate it because I supposed, like most measures of this kind, it would be mislaid if I did.

Now, sir, I did not intend to offer this and press it to supercede the article as it stands, but I intended to say to the chairman of the Railroad Committee that if he preferred that the original text as it stands should be passed through with, I was willing to go through with that and endeavor to amend it. That is a clear parliamentary right on his part. If the chairman of the committee desires to amend the text he has the right to do that and to a vote upon it before the vote is taken on a proposition which would supercede it. I did not intend for a moment to attempt to strike out the entire article without its being considered by the Convention, but, sir, as it seems to be more agreeable to the body to pass first upon the article as it is, I shall yield to that; but I desired to impress upon the Convention this form of doing whatever we do on this subject, of requiring of the Legislature a general free railroad law, open to the use of all who will embrace and comply with its terms; for, Mr. President, in my judgment, that is the first indispensable step to what this Convention desires on the subject of railroads. There is more of relief to what is complained of now, more of safety to the rights of the people in competition, than in any other measure

you can adopt. I would induce that competition as far as possible by offering to the capital of the world the opportunity of coming in and constructing roads from the Atlantic to the great West, that shall have an influence upon the rates which we are required to pay.

And, sir, I desire the members of the Convention to determine, each one for himself now, whether we shall attempt to put this kind of legislation in the Constitution, or whether we shall lay down great principles to govern legislation, and then leave the details to the Legislature, for that is the point of difference between the two propositions—the article as it stands and that which I propose.

For myself I cannot see how this Convention is to give full expression to its views. Take, if you please, the first section. There ought to be provision, as required in the amendment submitted by me, for some tribunal to settle differences that will arise between railroad corporations under this first section, and surely to the public there is no graver question than that of great leading railroads crossing each other at grade. We cannot do this in detail. Why, sir, that single section would require a space equal to all that is now occupied by the article under consideration, and the details necessary for a free railroad law would be longer than the Constitution ought to be. Therefore I have regarded it as impracticable to say what the Convention ought to say on this question in detail, and have thought it would be wiser and safer to lay down the general principles and rules by which railroads should hereafter be governed and require the Legislature to attach thereto the details. That was the object of my interposing this proposition at so early a moment, that my purpose might be understood by the Convention.

With these remarks, I shall listen to the amendments proposed, if there are any, by the chairman, and follow him through, and hope that the section may be greatly improved.

Mr. COCHRAN. I desire merely to say, as the only question now pending before us is the amendment offered by the gentleman from Allegheny, (Mr. T. H. B. Patterson,) that I am perfectly satisfied that amendment should be inserted in this section, for the reason which he assigns, that it obviates the necessity of passing the fourteenth section separately. I hope, therefore, that the amendment will

be inserted here, and that we shall not throw it out and have an entirely different section for the purpose of accomplishing the same point which a few words will accomplish in this section. This is all that I need to say with regard to that at present. I shall not say anything with regard to the remarks that fell from the gentlemen from Clearfield.

Mr. CORBETT. Mr. President: I sincerely desire to restrict railroads reasonably; but, as was said by the gentlemen from Clearfield, it ought to be done by laying down general rules or general principles. I hope this amendment will not prevail. What is it? Just look at it for an instant. It provides that one railroad company shall have the right to pass its cars over the road of another company. How? In what manner? By putting its own locomotive on that other road and taking charge of a train and running it over it, interfering with its timetable and schedule and endangering the lives of passengers? Is that the meaning of this amendment?

SEVERAL DELEGATES. No.

Mr. CORBETT. It is not? Well, I apprehend that it may be claimed under the amendment as offered. It proposes to allow one company to pass its cars over the road of another. Is it to take charge of the cars and pass them over the other road, or is it merely to deliver them over to the other road and that road to do it? I apprehend it may claim the right to run over any other road at any time and at all seasons, interfering with schedule time, and endangering not only property, but life.

Mr. SHARPE. I refer the gentleman to the last few lines of the section, which say that the Legislature shall prescribe the regulations.

Mr. CORBETT. Well, suppose they may prescribe the regulations.

Mr. SHARPE. The language is that they "shall" prescribe.

Mr. CORBETT. Are you going to put a clause in the Constitution merely allowing regulations to be prescribed?

But in addition to that, in principle it is wrong. What right has any company to take possession of the railroad track of another corporation and run its cars over it? If a corporation has the right to do it an individual ought to have the right to do it; and the necessary consequence is that by allowing every person to run cars over a road, it does not control the running stock at all. I am entirely op-

posed to any such thing. I am willing to limit and restrict railroads reasonably, and desire to do so in everything with regard to which restrictions ought to be put upon them, but I cannot vote for this amendment and I will not.

Mr. T. H. B. PATTERSON. I will simply say, in reply to the gentleman from Clarion, that this section provides that the Legislature shall, by general law, prescribe reasonable regulations for carrying into effect these powers and rights; so that these are not arbitrary rights, but the section itself provides that they shall be only exercised under a general law providing for all emergencies and contingencies necessary to be provided for.

Mr. BEAR. Before the vote is taken I wish to call attention to the fact that the amendment offered by the gentleman from Allegheny does not justify a corporation in putting a locomotive upon another road and running it over it, and therefore the argument of the gentleman from Clarion will have no effect. It gives the right to pass cars over that road, but of course they cannot be passed unless the company owning the road attach their locomotive to them. Therefore there cannot be any interference. I think the amendment is entirely right.

Mr. BRODHEAD. I should like to ask the gentleman how will they pass their cars over the road if they do not have a locomotive connected with them?

Mr. BAER. Then they cannot pass them unless the company owning the road attach their locomotives to them, and therefore it cannot injure that company.

Mr. BIGLER. It is evident that many members of the Convention do not understand the effect and purpose of this first section. It is to regulate the relations between the railroads themselves where they connect. It often happens that there are serious differences between them. One railroad will stand up and make an imperious demand upon another and defeat connections. This is for the purpose of regulating those connections and the intercourse between railroads; but I think it is very deficient because it ought to provide for some arbitration. All that, it is true, is left to the Legislature, and it may be done properly. I have alluded to one of those difficulties, the passing at grade—

Mr. HOWARD. I rise to a question of order.

The *PRESIDENT pro tem.* The delegate will state his question of order.

Mr. HOWARD. The question of order is that the delegate from Clearfield has spoken on this amendment once.

The *PRESIDENT pro tem.* The point of order is well taken.

Mr. KAINE. This is a very important provision, in my opinion. The principle of it is contained in the last section of the article as it is now before the Convention, which was offered by me in committee of the whole and adopted. The amendment now offered by the gentleman from Allegheny embraces everything that is material in that section, and it should be adopted here. It will be more uniform and better than where it is now.

I have not spoken before on this question, and I shall take up the subject just exactly where the gentleman from Clearfield left it. Great difficulty is experienced by the people from the disagreements of railroad companies, from one requiring of another things that are utterly impossible. Such things have occurred in my section of the State over and over again. There is a case now where two railroads run side by side together for a mile, and one company refuses to allow the cars of the other to run upon its road. They run together there, and the freight has to be unloaded from one car to the other. Now, sir, these are corporations created by the Commonwealth, and for the use and benefit of the people, and not for the exclusive benefit of the corporations themselves.

Mr. HOWARD. I desire to say to the gentleman that I am in favor of the amendment, and shall vote for it.

Mr. KAINE. I am much obliged to the gentleman. I thought he was opposed to it.

Mr. HOWARD. No, sir, I am not.

Mr. KAINE. It is just for the purpose of putting in the Constitution a provision that will require these companies, under suitable regulations made by the Legislature, to transfer each others cars upon their roads. Such an idea as not running a locomotive upon another road under a provision of this kind, as suggested by the gentleman from Clarion, is very strange to me.

Mr. CORBETT. Will the gentleman allow himself to be interrupted?

Mr. KAINE. Not now.

There are a number of railroads in this State now being operated by companies whose charters contain a provision that individuals shall have a right to run their

cars upon the roads, and I doubt not that the charters of the railroads, or some of them, in which the gentleman from Northampton (Mr. Brodhead) is interested, contain provisions of that kind, for all railroad charters granted prior to 1847 contain such a provision. I have just been handed a section of the railroad law of New Jersey, which provides:

"That companies whose railroads shall be constructed under provisions of this act shall have the right to connect their roads with any railroads within this or any other State, upon such terms as may be agreed upon by those who have the management of said roads; and in case of a failure of an agreement on the part of those having the management of said roads within this State, then and in that case either of said parties may apply to the Supreme Court within the jurisdiction in which said connection is proposed to be made, whose duty it shall be to appoint three disinterested citizens wherein provided for the condemnation of land, who shall determine and fix said terms, which, when approved by said court, shall be conclusive, and thereupon said companies shall be required to carry said terms into effect; and all companies whose railroads are or shall hereafter be crossed, intersected or joined shall receive from each other and forward to their destination all goods, merchandize and other property intended for points on their respective roads, with the same dispatch and at a rate of freight not exceeding the local tariff rate charged for similar goods, merchandize and other property received at and forwarded from the same points for individuals and other corporations."

Now, sir, under the provisions which we propose here the Legislature can pass a law similar to that, which will carry them into effect. It is absolutely necessary in Pennsylvania that something of this kind should now be adopted. It will not do to let large railroad corporations set up for themselves to the injury of other companies and to the injury of the people.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was agreed to.

Mr. BRODHEAD. I move to amend the section in the second and third lines by striking out the words, "between any two points." I imagine it would be rather difficult to have a railroad without build-

ing it from one point to another. I think the words are surplusage.

The amendment was rejected.

Mr. BRODHEAD. I move further to amend, in the fourth and fifth lines, by striking out the words "in passenger and freight tolls and tariffs." The omission of those words will make better grammar and better sense. The words are entirely unnecessary, and the requirements of the section are fully met by the sentence as it will read with those words excluded.

The amendment was rejected.

Mr. COCHRAN. Mr. President: I move to amend the section in the first line by striking out the word "company," and inserting the word "partnership," and also by inserting the words "and operate" after the word "construct" in the second line, so as to read:

"Any individual, partnership or corporation organized for the purpose shall have the right to construct and operate a railroad or canal between any two points in this State."

The amendment was agreed to.

Mr. COCHRAN. I move to change the word "and," at the close of the fourth line, to the word "or," so as to read "and no discrimination shall be made in passenger or freight tolls," &c.

The amendment was agreed to.

Mr. CORSON. I move to amend by striking out the word "prescribing," in the eighth line, and inserting "prescribe," and inserting after the word "regulations" the word "and," so as to read:

"The Legislature shall by general law prescribe reasonable regulations and give full effect to these powers and rights."

Mr. T. H. B. PATTERSON. That would destroy the meaning of the sentence. If the delegate from Montgomery will notice, the sentence as punctuated should have a comma after the word "law" and after the word "regulations." It would then read:

"The Legislature shall by general law, prescribing reasonable regulations, give full effect to these powers and rights."

It is right as it is now.

Mr. CORSON. "And give full effect."

Mr. T. H. B. PATTERSON. No; it is right as it is now, with a comma after the word "law," and after the word "regulations."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Montgomery.

Mr. T. H. B. PATTERSON. I hope it will not be adopted.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

The section was agreed to.

The second section was read as follows:

SECTION 2. Every railroad or canal corporation organized or doing business in this State shall maintain an office therein for the transaction of its business, where transfers of its stock shall be made and books kept for the inspection, by any stock or bondholder, or any other person having any pecuniary interest in such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers.

Mr. J. R. READ. I move to strike out the words "or any other person having any pecuniary interest in such corporation," in the fourth and fifth lines.

Mr. CAMPBELL. That was very fully debated in committee of the whole, and the Convention after mature consideration inserted those words. I hope the amendment will not prevail.

The amendment was rejected.

Mr. BRODHEAD. I move to strike out the last "or" in the first line and insert the word "and," so as to read "organized and doing business in this State."

The difficulty with this section is that, having that word "or" there, it will include all foreign corporations and require them to keep an office in this State for the transfers of their stock. I do not believe this was the design of the committee or is the design of the Convention. There are quite a number of foreign corporations doing business here; and to ask them to do this would be asking rather too much. I think by striking out that word and making it "and," it will not include them.

Mr. COCHRAN. I must differ with the gentleman from Northampton on this subject. I do not see why any corporation having rights under the legislation of Pennsylvania and authorized to do business in this State should have superior immunities over corporations which reside in the State and are composed of our own citizens. If we grant an advantage to parties living outside of the State, allowing them to come in and transact business here and make money in this State, shall we not subject them to precisely the same regulations in this regard

to which we subject our own people? The section was drawn in this form with a view just exactly to meet that point and to include all alike and put them on an equal footing, so that we might have the same control over foreign as over domestic corporations in regard to this subject.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Northampton (Mr. Brodhead.)

The amendment was rejected.

Mr. J. M. WETHERILL. I offer the following amendment, to be added to the section:

"The chief officer or directors of every such corporation shall annually make a report, under oath, to the Secretary of Internal Affairs, which report shall include a detailed statement of its receipts and expenditures, assets and liabilities, as well as the receipts and expenditures, assets and liabilities, for or on account of any property leased or operated by it, and such other matters relating to its business as are now or hereafter may be prescribed by law."

Mr. President, a portion of the language of the amendment was embodied in the report of the Committee on Corporations, but not so fully as at present introduced. There are a great many railroads leased by the different corporations now in existence from which no report, or but a mere semblance of a report, is presented by the Auditor General to the people of the State. I have received through the post-office to-day, as have most members of the Convention, the detailed statement in the report of the Auditor General, and in glancing over it hastily I perceive that no report whatever is rendered to the people of the State, or at least but the semblance of a report, from a large number of railroad companies. These are the Allentown, Bald Eagle Valley, Barclay Coal Company, Bedford and Bridgeport; Buffalo, Bradford and Pittsburg; Catawissa, Chartiers, Chester Creek, Chester Valley, Chestnut Hill, Cleveland and Pittsburg, Cowanesque Valley, Colebrookdale, Columbia and Port Deposit, Connecting; Danville, Hazleton and Wilkesbarre; East Brandywine and Waynesburg, East Nahanoy, East Pennsylvania, Ebensburg and Cresson, Elmira and Williamsport, Erie and Pittsburg, Fayette County; Harrisburg, Portsmouth, Mount Joy and Lancaster; Hempfield, Jamestown and Franklin, Jefferson, Lawrence, Lehigh and Lackawanna, Lehigh and Susquehanna,

Lewisburg Centre and Spruce Creek, Littlestown, Little Schuylkill Navigation and Railroad, Lykens Valley, Mifflin and Centre County, Mill Creek and Mine Hill, Mine Hill and Schuylkill Haven, Mount Carbon and Port Carbon, Mount Pleasant and Broad Ford, Nesquehoning Valley, New Castle and Beaver Valley, Newry Branch, Pennsylvania and Delaware, Perkiomen railroad, Philadelphia and Baltimore Central, Philadelphia and Erie; Philadelphia, Germantown and Norristown; Philadelphia and Trenton, Pickering Valley; Pittsburg, Cincinnati and St. Louis; Pittsburg and Connellsville; Pittsburg, Fort Wayne and Chicago; Plymouth, Reading and Columbia, Schuylkill and Susquehanna, Schuylkill Valley Navigation, Shamokin Valley and Pottsville, Southwark, Sunbury and Erie, Sunbury and Lewistown, Tyrone and Clearfield, Wellsboro' and Lawrenceville, West Chester and the Western Pennsylvania.

All these railroad companies having been leased by corporations who own the charters of other roads, the reports of the receipts and expenditures, the assets and liabilities, and all matters relating to them, are lumped in the reports of the existing corporations by which they are leased, and hence the people of the State receive no information whatever, or but exceeding meagre information, on these subjects. I offer this amendment compelling the companies that operate these roads to make detailed statements and give the facts of their management to the public in the same manner that they do as to the roads the charters of which they own and operate themselves. I trust my amendment will pass, as I think that it will be a great advantage to the community.

Mr. TURRELL. Mr. President: The thirteenth section of this article, it seems to me, provides sufficiently for this. It provides for annual reports and provides that the Secretary of Internal Affairs may at any time call for special reports; so that this amendment is not necessary.

Mr. J. M. WETHERILL. Let me ask the gentleman a question.

Mr. TURRELL. I am not on the floor.

Mr. J. M. WETHERILL. I call for the yeas and nays on the amendment offered by me.

The *PRESIDENT pro tem.* Do ten gentlemen rise to second the call?

Ten gentlemen rose.

Mr. COCHRAN. Before the yeas and nays are called, I wish to say that, so far as the amendment is concerned, I entirely agree with its intention and design. The only difficulty I had about it was—and that I suggested to the gentleman from Schuylkill—that I supposed it was covered by the provision of the thirteenth section as suggested by the gentleman from Susquehanna (Mr. Turrell.) If it is I should rather not add unnecessary matter; but if it is not so satisfactorily covered by that, I am perfectly content that it shall go in here. I certainly do not oppose any information which is intended to develop fully the condition and management of these special corporations to the people of the State.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on the amendment of the delegate from Schuylkill (Mr. J. M. Wetherill.)

The yeas and nays were taken and were as follow, viz:

Y E A S.

Messrs. Achenbach, Alricks, Armstrong, Bailly, (Perry,) Baker, Black, J. S., Brodhead, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cochran, Curry, Dunning, Ewing, Finney, Funck, Gibson, Hay, Landis, Lear, MacConnell, Metzger, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Reynolds, Ross, Sharpe, Smith, Henry W., Van Reed, Wetherill, J. M., White, David N. and White, Harry—39.

N A Y S.

Messrs. Baer, Biddle, Bigler, Black, Charles A., Boyd, Broomall, Cassidy, Corbett, Corson, Cronmiller, Darlington, Davis, De France, Edwards, Elliott, Fulton, Gilpin, Green, Guthrie, Hall, Harvey, Horton, Howard, Kaine, Lambertson, Lawrence, Lilly, Littleton, Long, M'Clean, M'Culloch, Mann, Mantor, Niles, Pughe, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Simpson, Stanton, Turrell, Walker, Wherry, White, J. W. F. and Worrell—46.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Clark, Collins, Craig, Curtin, Cuyler, Dallas, Dodd, Ellis, Fell, Hanna, Hazzard, Hemphill, Heverin, Hunsicker, Knight, MacVeagh, M'Camant,

M'Murray, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Parsons, Porter, Runk, Russell, Smith, H. G., Smith, Wm. H., Stewart, Struthers Temple, Wetherill, Jno. Price, Woodward, Wright and Meredith, *President*—48.

Mr. COCHRAN. The word "the," in the clause "for the inspection," is surplus. The words ought to be "for inspection." I move to amend by striking out the word "the."

The amendment was agreed to.

Mr. FELL. I move to amend by striking out, after the word "therein," the words "for the transaction of its business." That will make the section read: "Every railroad or canal corporation organized or doing business in this State, shall maintain an office therein, where transfers of its stock shall be made and books kept for the inspection by any stock or bondholder, or any other person having any pecuniary interest in such corporation," &c. It gives all the power for inspection that is required, but does not force the company to maintain an office for its business in the State. There are companies which have their offices in New York and Boston, where the transaction of their business is conducted, but they have offices for the transfer of stocks within the State. There is a feeling that there ought to be an office in the State where you can go and inspect what has been done in regard to the stock and who are the stockholders. That is very proper, I think; but if you were to force these companies to maintain an office for the transaction of their business within the State, it might cause a great deal of trouble without doing any good to the people of the State.

On the question of agreeing to the amendment proposed by Mr. Fell, a division was called for, which resulted fifty-two in the affirmative, and twenty-one in the negative. So the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

The section as amended was agreed to.

The PRESIDENT *pro tem*. The third section will be read.

The CLERK read as follows:

SECTION 3. The property of railroad and canal corporations, or other corporations of a similar character, doing business in this State, and other joint stock companies now existing or hereafter created, shall forever be subject to taxation; and the power to tax the same shall not

be surrendered or suspended by any contract or grant to which the State shall be a party.

The section was agreed to.

The PRESIDENT *pro tem.* The fourth section will be read.

The CLERK read as follows :

SECTION 4. No railroad, canal or other corporation, nor the lessees, purchasers or managers of any railroad or canal corporation shall consolidate the stock, property or franchises of such corporation with, nor lease, purchase, or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any of the officers of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and whether railroads or canals are parallel and competing lines shall always be decided by a jury in a trial, according to the course of the common law.

The section was agreed to.

The PRESIDENT *pro tem.* The fifth section will be read.

The CLERK read as follows :

SECTION 5. No railroad, canal, or other corporation, doing business as a common carrier, shall either directly or indirectly hold, guarantee, or endorse shares in the capital stock, bonds, or other indebtedness of any other corporation, individuals, or partnership, except those doing the business of common carriers.

MR. JOSEPH BAILY. I move to strike out all after the words "section five," and insert: "No railroad or canal corporation shall have the right to invest in, or purchase, or hold shares in the capital stock, bonds, or other indebtedness, or purchase, hold or lease the franchise and property or other estate of any other railroad, canal or other corporation, either in its corporate name, or by its officers, or through the intervention of trustees or other agents holding the same for its use."

I would now like the attention of this Convention for a few minutes. I have never occupied any of the time of this body until now, and I desire very much to be heard in what I have to say on the subject. I think it will take me more than ten minutes, and I hope my friends will indulge me until I am through.

MANY DELEGATES. Go on; take all the time you want.

MR. LILLY. I desire to say before the gentleman commences that I shall not object.

The PRESIDENT *pro tem.* The gentleman from Perry will proceed.

MR. JOSEPH BAILY. Mr. President: If the people of Pennsylvania are to have such safe-guard's incorporated in the Constitution as to afford them protection from the dangerous power of railroad monopolies, then other remedies will have to be adopted than those contained in the report of the committee of the whole. It is true there are many salutary provisions in that report, but they are all rendered nugatory by the sweeping powers contained in the last clause of the fifth section. The section reads as follows:

"No railroad, canal or other corporation doing business as a common carrier shall, either directly or indirectly, hold, guarantee or endorse shares in the capital stock, bonds or other indebtedness of any other corporation, individuals or partnerships, *except those doing the business of common carriers.*"

If gentlemen will examine the section carefully they will perceive that if the eight last words were not there the section would contain a direct prohibition to deal in each others stocks and bonds by railroad and canal companies, but the insertion of them changes entirely the character of the section.

This power to purchase the stocks of each other, together with the power to purchase or lease the chartered franchise of each other, has been the fruitful cause of building up the great monopolies which now stretch themselves like great giants across our fair Commonwealth. With such power these great companies can prevent the construction of rival roads by simply purchasing a majority of their stock, thereby changing the ownership and direction. The fourth section of the report prohibiting the consolidation of parallel or competing lines is rendered a nullity by this power to purchase each others stocks. Before a competing line can be built and in operation, a majority of its stock will be secured by its more fortunate neighbor, and absorption will be the consequence.

If the Convention deem it wise to legalize monopolies, then the proper plan has been adopted in this fifth section. But if, on the other hand, this Convention considers the rights of the people as paramount and the rights of corporations as subordinate to those of the people, then

this fifth section should be amended by a provision prohibiting railroad and canal companies from purchasing each others stocks, or chartered franchise or leasing the same.

I offer this amendment with the view of protecting the rights of the people and in no spirit of hostility to any company. I will never consent to deprive any railroad or canal company of any right essential to their usefulness as public institutions; but to confer powers injurious to the well-being of the institutions of the Commonwealth is another thing, and, so far as I am concerned, will be resisted.

I believe the amendment will operate as an effectual remedy for many of the evils complained of. It contains nothing new; nor is it the radical and dangerous measure that many persons believe it to be. It only restores the provisions of the original charters of all the older railroad companies. The Philadelphia and Reading, Lancaster and Harrisburg, Cumberland Valley, Minehill and Schuylkill Haven, West Chester Valley, and many smaller railroad companies, had no grants of power in their original charters to buy the stocks or franchise of each other, but on the other hand such grants were scrupulously withheld. These are the oldest railroad companies in the State. The Pennsylvania railroad company, chartered in 1846, had no such grants of power in its original charter, nor could it have obtained such a grant at that time. These grants have been insidiously obtained from time to time by special legislation, and have been the fruitful source of the corruption and demoralization of legislators and other public men, and not until 1870 did the Legislature so far forget its duty to the people as to confer, by a general law, the full and unrestrained power on railroad companies of purchasing each others stocks and chartered franchise and also to lease. Since then all the smaller roads worth anything have been purchased or leased by the larger and more fortunate ones, and the construction of rival lines, by the extension of some of these smaller roads, absolutely prevented. And now we have the extraordinary spectacle of almost all the transporting and carrying power of the State, being virtually under the control of one vast monopoly.

Was such legislation, granting such extraordinary powers to corporations, enacted in the interest of the people? No honest man can, I think, entertain such

an opinion. What equivalent have the people of Pennsylvania received for the concession of such unlimited powers? Has there been any reduction in rates of tolls? I think not, but on the other hand they have been increased. It is true the people living beyond the boundary of Pennsylvania, where the influence of the Baltimore and Ohio and the New York railroads come in competition with the Pennsylvania railroad, have their persons and property transported at greatly reduced rates.

This fact clearly and indisputably proves the advantages to be derived from rival lines, and ought forever to close the mouths of the advocates of one grand non-competing line. The section proposed by me prohibits railroad and canal companies from dealing in the property of each other. It provides as follows:

SECTION —. No railroad or canal corporation shall have the right to invest in, purchase or hold shares in the capital stock, bonds or other indebtedness, or purchase, hold or lease the chartered franchise and property or other estate of any other railroad, canal or other corporation, either in its corporate name, or by its officers or through the intervention of trustees or other agents holding the same for its use.

It will be observed that the amendment contains an explicit denial of the right to purchase or lease the franchise or to purchase shares in the capital stock of each other. By this provision the stockholders of each corporation will be protected in the ownership and control of their respective lines of improvement, and the continued fear of being absorbed by companies more powerful than themselves will be removed. Each company, being owned by individual stockholders, will always be under their control, and in the management of its pecuniary and internal affairs will be independent of all other companies; but being connected together, as provided in section fourteen of this article, and obliged to pass all cars, passengers and freight from each others roads at uniform rates, these separate and independent corporations, in their business operations, will furnish the people with a complete system of local and through transportation, and will be built wherever and whenever the wants of the people demand their construction. I cannot see why a net work of railroads all over the State, under such a system, will not be far more economical and advantageous

to the people than any system under the management and control of one great monopoly.

The national banking system is somewhat analogous, and I refer to it to illustrate this independent system of railroad transportation. The old United States bank, with a capital of \$30,000,000, was destroyed by President Jackson for the supposed political power wielded under the management of one head. But the national banking system, with a combined capital of near \$400,000,000, distributed all over the country, under the control of corporations with small capital, each company being managed by its own board of directors, and in its business operations entirely independent of all the rest, affords the people a system of banking and currency far superior to anything of the kind the old United States bank could have furnished; and the isolation of the individual banks entirely deprives the system, as a whole, of the power to wield serious political influence. Would any sane man ever have proposed the incorporation of one bank with a capital of \$400,000,000, to be located in any one of the large cities? The idea is preposterous. Yet, scattered all over the country and divided into a great number of isolated banks, the system furnishes the people with a sound and uniform currency, and the stockholders of this immense but divided capital are favored with a profitable investment.

In the place of one great national bank, with its vast political power, we have a system of national banks so separated in their business operations as to be incapable of combining together for any political purpose. In a similar way I propose a system of railroad corporations without power to purchase each others rights, but so connected together as to afford every facility for transportation, yet so independent and separated from each other as to prevent the possibility of a combination calculated to interfere with the institutions of government, instead of one great railroad corporation capable from its very nature of seriously impairing the whole fabric of government itself.

The population of Pennsylvania is increasing very rapidly, and her great interest in agricultural, manufacturing, mining and commercial purposes are expanding and developing far more rapidly than the calculations of the most sanguine have indicated.

In twenty years our population may very nearly reach ten millions of souls. Who can predict the business necessities of such a population. Will it be wise to subject such numbers and such vast interests to the transporting power of one great monopoly.

Yet this will inevitably be the result if the last clause in the fifth section should unfortunately become a part of the Constitution. Rivalry in transportation will be impossible, for the greater will always absorb the less corporations in any attempt to establish competing lines.

The Pennsylvania railroad, with all the efficiency and wisdom of its present management, is certainly very nearly worked to its profitable capacity. To run many more trains will deprive them of the power to keep the road in repair. There is a limit to the carrying capacities of any railroad from this cause. Workmen always avoid danger from passing trains, and their repair force, from this cause, lose at this time a very considerable percentage of time.

Suppose two more tracks be added to that road, it will scarcely double its present capacity, on account of the increased difficulty and danger of keeping the inside tracks in repair. I think it cannot be successfully denied that the policy of that company has been exerted to discourage and prevent the building of rival roads. In the single case of the Cumberland Valley railroad this policy is fully illustrated. That company had extended its road to form a connection with the Baltimore and Ohio railroad, thereby with the Connellsville railroad in the west and the Reading railroad, by its Harrisburg branch, in the east, was prepared to furnish the people with a competing line from Philadelphia to Pittsburg; but the project has been defeated by the Pennsylvania railroad company purchasing a majority of the stock of the Cumberland Valley road, and converting that old and well-established road into a division of the Pennsylvania railroad. By this shrewd operation the ownership of near one hundred miles of this new line to the west is now lodged in the Pennsylvania railroad company, and the people have been deprived of the advantage of a rival line to the west. If the amendment proposed by me had been part of the present Constitution this thing could not have occurred. I speak of the Pennsylvania railroad company with no

feelings of hostility. I know the gentlemen who control that great and wonderful organization to be honest, and are actuated, most probably, by motives of patriotism. In the course of things they must pass away, and their places may be filled by others actuated by more sordid purposes than those gentlemen now having control of that company. I only war with the power conferred upon a single vast corporation to monopolize and control the whole carrying trade of the Commonwealth. In my judgment it is the duty of this Convention to give to this question of transportation all the consideration that a subject of so much importance deserves. The movements of the people all over the country warn us to the task. In the west they are banded together by hundreds of thousands to effect reform in this particular; and the influence of these organizations will soon be felt in the east.

The necessity for such organizations is greatly to be deplored, and a corrective should at once be adopted which will avoid the necessity of their longer continuance. Why should the friends of the great corporations of this State oppose this amendment?

Let us see whether its adoption will not, in the end, be advantageous to them. An opposition line is about being built from New York to Philadelphia; and this road, supported by a combination of the great capitalists of the country hostile to the Pennsylvania roads, may soon be extended across the State to the west. By the power and ingenuity of such a combination the stocks of our present companies may be ruinously depressed and a majority of it purchased by the new and more powerful company, until the Pennsylvania and other great corporations may become mere divisions of a greater than themselves. The new company would only be following the teachings of those it had absorbed. The adoption of the amendment offered by me will secure these companies from absorption by this new and more powerful combination, and save the people of Pennsylvania from the infliction of a greater monopoly than now exists, and the stockholders of those companies from ruinous losses by depreciation in the price of their stock.

If this monopoly policy should unfortunately be adopted and supported by constitutional sanction, then we shall ever be cursed with this continually recurring warfare of the greater absorbing the

weaker companies, in order to prevent competition in the transporting and carrying business of the country.

The stronger will not permit the weaker to exist as rival roads, but will absorb them by this power to purchase their stocks or franchise. In such a warfare between these soulless monopolies to circumvent and absorb each other, demoralization of the people and their business interests will be the inevitable consequence.

Will it be wise to legalize, by constitutional provision, such a dangerous policy; fraught, as it must be, with ruin to the industrial and free institutions of the State?

In addition to the evils I have portrayed, by reason of the existence of such absorbing monopolies, let us dwell for a moment upon the political effect which will inevitably result. The Legislature and high officials of the Commonwealth will be selected and elected by this one power. The legislation will be framed under its dictation and in its interest; step by step it will encroach upon the liberties and rights of the people until this process of absorption will reach its final culmination in the destruction of the present institutions of government, and the Commonwealth will then only exist in name.

The PRESIDENT *pro tem.* The hour of one o'clock having arrived, the Convention takes a recess until three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

LEAVE OF ABSENCE.

Mr. DARLINGTON asked and obtained leave of absence for Mr. Hemphill for a few days from to-day.

RAILROADS AND CANALS.

The Convention resumed the consideration, on second reading, of the article on railroads and canals.

The PRESIDENT *pro tem.* When the Convention took its recess, the pending question was on the amendment of the delegate from Perry, (Mr. Jos. Baily,) to strike out all of the fifth section, after the word "section," and to insert in lieu thereof what will now be read.

The CLERK read as follows:

"No railroad or canal corporation shall have a right to invest in, purchase or hold shares in the capital stock, bonds or other indebtedness, or purchase, hold or

lease the franchise and property or other estate of any other railroad, canal or other corporation, either in its corporate name, or by its officers or through the intervention of trustees or other agents holding the same for its use."

Mr. JOSEPH BAILY. On that amendment I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. COCHRAN. Before the yeas and nays are taken, I only wish to say that I am in entire harmony with the gentleman from Perry in the views which he expressed here this morning, and so far as I am individually concerned—I suppose I cannot answer for others—I am in favor of the amendment which he has offered and shall vote for it.

Mr. BIDDLE. Before the vote is taken I ask the chairman of the Committee on Railroads whether the section was not originally reported without the eight last words which this amendment proposes to strike out?

Mr. COCHRAN. The section as originally reported did not contain the last eight words.

Mr. BIDDLE. Then the amendment makes it in harmony with the report of the committee.

Mr. BAER. I wish simply to call attention to the fact that the amendment does not bring the section in harmony with the original report. Those eight words make it quite different from the amendment adopted. This precludes the leasing or purchasing of a small road, which the original did not. I hope the amendment will be voted down, as it will effectually close all enterprise in the interior of the State. It will be the death-blow to the making of railroads in the interior. I trust it will be voted down.

The PRESIDENT *pro tem*. The yeas and nays will be taken on the amendment.

The yeas and nays were taken and resulted as follow, viz:

Y E A S .

Messrs. Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Broomall, Buckalew, Calvin, Campbell, Carter, Cochran, Funck, Guthrie, Landis, Lawrence, Lilly, MacConnell, M'Clellan, M'Culloch, Mantor, Newlin, Palmer, G. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Sharpe, Smith, Henry W., Temple, Wherry, White, David N., White, Harry, White, J. W. F. and Wright—32.

N A Y S .

Messrs. Armstrong, Baer, Bigler, Black, Chas. A., Boyd, Brodhead, Brown, Cronmiller, Cuyler, Darlington, Davis, De France, Edwards, Elliott, Ellis, Fulton, Gilpin, Hall, Hay, Heverin, Horton, Howard, Kaine, Long, Mann, Metzger, Niles, Purman, Purviance, John N., Reed, Andrew, Rooke, Ross, Smith, Wm. H., Stewart, Turrell, Van Reed, Walker, Wetherill, J. M. and Wetherill, Jno. Price—39.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Clark, Collins, Corbett, Corson, Craig, Curry, Curtin, Dallas, Dodd, Dunning, Ewing, Fell, Finney, Gibson, Green, Hanna, Harvey, Hazzard, Hemphill, Hunsicker, Knight, Lamberton, Lear, Littleton, MacVeagh, M'Camant, M'Murray, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Patterson, D. W., Patton, Porter, Pughe, Read, John R., Runk, Russell, Simpson, Smith, H. G., Stanton, Struthers, Woodward, Worrell and Meredith, *President*—62.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. COCHRAN. I move to amend by striking out all after the word "partnership," in the fourth line.

This clause of the section was not in the report of the committee which had this subject in charge, but was introduced into the section in opposition to the friends of the article. It is in fact an almost entire destruction of the whole aim and object contemplated when this section was drawn. With this clause in it there is very little substance in the section, very little left of it. It simply prevents railroad companies from investing in the stocks and bonds of corporations other than railroad companies. That is to say, it may prevent them from investing in the stocks and bonds of mining companies and manufacturing companies; but it does not prevent the evils which flow from the combination and absorption and uniting together of the different railroad companies throughout the State, and so building up and combining an overwhelming and overshadowing influence against which there is no power left in the State or among the people to resist.

Now, sir, railroad companies, of course, act under privileges granted by the Commonwealth, and each railroad company that is incorporated receives its charter for the purpose of building a specific road from one point to another designated in its charter, and this is the power which has been conferred upon it by the people through the Legislature of the State. But such has been the operation and effect of the policy which has been pursued and of legislation which has been superadded that this original idea which was included in the legislation of the State has been entirely departed from, and there has been an aggregation of power by combinations through the purchase of a controlling influence by one railroad in the stock of another that the State has become in effect unable to resist it.

This is secured in many ways, sometimes with and sometimes without the knowledge of the stockholders of the particular railroad which is thus affected, and we have had illustrations of it time and again. One was given by the gentleman from Perry (Mr. Joseph Baily) this morning, in regard to the Cumberland Valley railroad and the result and the effect of the policy which was pursued in that particular case; and there are numerous other cases which might be cited in all parts of the State, showing the detrimental effects of permitting a policy of this kind to continue.

There is no reason why the railroad companies should become dealers and brokers in the stock of each other. There is no reason why they should become alienees and purchasers, as railroad companies, of stocks in this Commonwealth. That is not the design for which they were incorporated. The design of their incorporation was to be transporters on the particular lines of road which they were incorporated to build; but instead of that they become traffickers in the stocks of one another, the whale swallowing the minnows, and in this way we have aggregated a power in this State which there is no power outside of it shortly which will be able to overthrow.

Now, sir, the policy is a dangerous one. It is a dangerous one in various points of view, and it is one which it would be well for gentlemen here to consider in view of the facts of which we are apprised from day to day in the history and events of the times in which we live; and it is not politic nor wise for us to allow this system to go on and continue any longer.

The time has come when it must be stopped here, or it will be stopped in some other way which I should be very loth to see applied to it.

I hope, Mr. President, that this portion of this section will be stricken out and that it will be left to stand on the same footing which it occupied when it was reported by the Committee on Railroads and Canals, and, with that done, I believe that most of the advantages which would have been secured by the passage of the amendment offered by the gentleman from Perry (Mr. Joseph Baily) will be realized, and that you will adopt a wholesome system for the management of railroads in the future.

Mr. NILES. I hope the Convention will pause before they pass the amendment suggested by the chairman of the committee. He is right when he tells us that the Committee on Railroads are not responsible for this provision. That is true. The committee of the whole are responsible for it, after a long and interesting debate upon the question. While I do not pretend to represent anybody's railroad here to-day, I undertake to say that we ought not by our policy put into the Constitution a system that will serve to build up a Chinese wall around the State as far as improvements are concerned, or which, in effect, will go far towards tearing up the railroad tracks of the Commonwealth. We ought to treat the railroad interests of this State precisely as we treat all other interests.

Sir, what is this proposition? It simply says that no existing railroad shall endorse the bonds of any other struggling railroad in this Commonwealth. That subject was all gone over in the debate in committee of the whole. The portion of the State from which I come has a deep interest in this question. We have lived during the whole existence of this State outside of the great railroad interests of Pennsylvania, and the only aid that we have ever had and the only aid that we expect is that the railroads that are in existence to-day will aid us and assist us in the development of our section of the State. There is no struggling railroad in existence to-day trying to build itself that is not asking the aid of corporations of this State and the capitalists of the Old World to buy its bonds; and shall the roads that have simply an existence on paper be debarred from the advantages that the roads that are now in existence have had? Why, sir, the first

great railroad that was built in this State, from Columbia to Philadelphia, was built upon the credit of the State. The Philadelphia and Erie railroad, that has opened up the way to your beautiful city, has been built by the endorsement of its bonds by the State and certain railroad companies. The Allegheny Valley railroad, with its short lines and easy grades, is being built to-day by the endorsement of its bonds by the other railroads of the State. It has been so in the past. It has been one of the great means by which the different sections of the State have been opened up and developed. And shall we say here to-day in the hard lines of the Constitution that these advantages that we have had in the past, and which have worked so admirably, shall not be extended in the future? I hope that in our crusade against corporations we will pause and reflect before we put a provision in the Constitution of the State which, if adopted by the people, will prevent any aid in the future to the struggling railroads of the State.

Mr. MANN. I desire to add a few words to what my colleagues has said on this subject. These few lines which the chairman of the committee desires to strike out are of vital importance to northern Pennsylvania, especially to that portion of Northern Pennsylvania from which the gentleman from Tioga and myself come. The Buffalo, New York and Philadelphia railroad is already constructed from the city of Buffalo to the Philadelphia and Erie road at Emporium. It is a leading, vital and active road, and it has brought the only railroad advantages to the counties of M'Kean and Potter that they have ever received. We have received no benefit whatever from our own State, and if this section is to be adopted, in all probability we never shall receive any such. It will not only prevent us from receiving any aid from the railroads of our own State, but it will prevent the Buffalo and Washington Railroad from doing what it desires to do. It has secured authority from the Legislature of New York to guaranty the bonds of the Pine Creek railroad to the extent of \$10,000 per mile, and they are ready to extend aid to the construction of the Pine Creek railroad, extending from Port Allegheny, in M'Kean county, to Linden Bridge, in Lycoming county, a distance of one hundred and six miles, whenever a certain amount has been expended upon

it beyond that which has already been expended.

Now, sir, if this section be inserted in this Constitution it will be an entire bar to any such assistance as this company is desirous of giving to us. The Pine Creek road and the Buffalo road, in connection with the Reading, will make the shortest route from tide-water to Buffalo. It will bring Philadelphia nearer to the city of Buffalo than New York is; and yet you propose in the Constitution of the State to prevent the construction of that link which is now needed to bring the great city of the lakes nearer to your city than it is to the city of New York. Already the Pennsylvania railroad company has put upon its own road and its connections, and over the Buffalo and Washington railroad, a train that takes passengers from Philadelphia to Niagara Falls quicker than they can be taken from New York city to Niagara Falls, and it is by means of this Buffalo road, which stands now ready to assist in building this other connecting link that shall bring it twenty-eight miles nearer still. Now, this is but a single instance. There are various companies constructing railroads in northern Pennsylvania in the same situation. The Pine Creek railroad has been located; work has been commenced upon it at both ends, and with such help as it can obtain under existing laws it will be constructed within a few years, and will develop more of Pennsylvania than any railroad proposed to be built—I mean of the remaining undeveloped portion of the State.

What possible harm can come from this construction of extending lines? Is there any objection to making one line from Philadelphia to Buffalo under one management, one control, thereby economizing time and money, and cheapen the cost of carrying passengers and freight from Philadelphia to Buffalo? One company, under one organization, can carry both passengers and freight at least fifteen per cent. cheaper between these two points than three or four companies can; and what harm comes of it? None whatever. The idea that there will be any more power in the hands of one company extending between two points than if is divided up between three or four companies is entirely imaginary. The railroad interest, whatever it may be, however the number of companies may be enlarged or diminished, is one

interest; it can as easily consolidate if there are twenty of them as if there be but one, as to their effect upon legislation.

Now, then, for the sake of the undeveloped portions of Pennsylvania, I beg gentlemen not to strike out these lines at the closing part of this section. You have stood coldly by long enough; you have refused by legislation all assistance to help northern Pennsylvania in any particular, except by the building of the Philadelphia and Erie railroad, which strikes a few of the northern counties. Now, do not put your hands on the rest of them and say they shall neither be developed by your own companies nor by the railroad companies of the State of New York who may be willing to do it; for every mile of railroad from Buffalo towards the city of Philadelphia, which may be constructed by the aid of the Buffalo and Washington railroad, is a direct contribution to the business, wealth and prosperity of Philadelphia, and it will be paying into the Treasury of the Commonwealth large amounts of revenue. Why put obstacles in the way of it? Simply because there has grown up in the minds of some men the idea that every additional railroad is an additional danger to the liberties of the people. A greater fallacy, it seems to me, never entered into the mind of man.

Mr. ARMSTRONG. It appears to me that the words which the gentleman from York proposes to strike from the section are of great value to it. The section as it stands, with these words in it, imposes all the restrictions which ought to be imposed, for it prevents railroads from engaging in business foreign to the purpose of their organization, which is transportation, or in other words, the business of common carriers. Now, the northern counties of this State, beginning at Warren and extending to Bradford, are effectually cut off from the central portions of the State by a line of hills which can be pierced only in certain places, and it happened not many years ago that they were so effectually cut off from intercourse with the lower part of the State that the social sympathies and inclinations of the people of that portion of the State were far more intimate with New York than with Pennsylvania.

Mr. NILES. They are now.

Mr. ARMSTRONG. The gentleman from Tioga says that they are now. Now, this line of territory embraces valuable coal,

iron and lumber interests which ought not to be diverted either in its transportation or manufacture from the State of Pennsylvania. The roads which are necessary to pierce this line of hills and to bring these northern counties into closer intimacy with the State must be built with the assistance of other railroad corporations having an interest in their transportation.

We are now getting, in my judgment, too far upon this question. The whole framework of the article seems to be based upon the idea that the railroad interests antagonize the interests of the State. I do not so regard it. Railroads require some restriction, but we have gone so far that there is every great danger that we have already so crippled and trammelled their business, that we greatly impair their usefulness, and I believe that the amendment proposed by the gentleman from York to this section ought not to be adopted. As the section stands, it will prevent a railroad corporation from engaging in business not germane to the objects of their organization, but will still leave them at liberty to assist such corporations as cannot live without such assistance. It is the interest of the people everywhere that those portions of the State, sparsely settled and poor because they lack the necessary facilities of business, shall be built up, and we ought to throw no embarrassment around such assistance as great corporations able to render assistance may be willing to render. Capital is always sufficiently cautious to guard well its own investments and to care for its own interest well. The discretion is soundly left to great corporations when we trust it to the timidity which is proverbial in the investment of capital.

Mr. TURRELL. I have never been accused of any particular friendliness to railroads in this Convention, but rather the reverse, having been considered as going to the verge of insanity in opposition to them. But this is a practical question, and I desire to look at it as such. I will not go over the ground which has already been taken in the argument. I say this, a demonstration of which has come under my own observation and which will commend itself to the mind of every man who will stay to think about it. There are all along in the vicinity of the main lines of railroads in this State communities which are mainly agricultural, which have no mineral wealth or any-

thing that will attract the capital there to invest in and build railroads, aside from the capital which already exists in those communities. They are too poor to build the roads themselves, and they are deprived of communication with the outer world by railroads on that account.

Now, sir, as it has occurred under my own observation, a community of that kind have had this said to them by the main line: "You raise money enough to do the grading of this road, and we will furnish the means to put on the superstructure and the rolling stock." Their interests are joined, and they go to work and they build that road in that way. The inhabitants raise money enough to do the grading; the superstructure and the rolling stock are furnished by money from the stockholders of the main line, and the road is built and they both enjoy the advantages of it. One has the advantages of being brought into connection with the markets of the State; the other has the additional business brought on to its line, and they are both benefited, and I should like to know who is harmed.

Now, sir, this amendment if you adopt it, destroys the right to so build railroads, prevents it; and there are thousands of these communities all along the main lines just in these circumstances, which would be deprived of the advantages that are thus given if you adopt this amendment.

I will not spend words upon it. As I said before, it is a practical thing, and every man who looks at it will see that these circumstances exist everywhere in the State, and we ought not to prevent the mutual assistance which is thus rendered and by which both parties interested are benefited.

Mr. BIGLER. Mr. President: In confirmation of what has been so well said by the delegate from Susquehanna, I will state that through Centre county at this time a railroad is being constructed precisely on the principle which he has set forth. The agriculturists there are unable, they cannot command the means to construct a railroad and put down the iron and equip it. It was on this principle that a railroad was constructed to my own town, and that road is now intended to be extended to what is known as the low grade on the Mahoning. In truth, sir, off the main lines all railroad facilities in the northwest have been secured in that way.

Now, sir, I agree that local interests and especially personal interests must give

way if there is a great public necessity, especially if there be something that endangers the liberty of the country or the rights of the people; but, with the delegate from Susquehanna, I ask in all this what harm has been done? So far from adding to the power of the great corporations that carry it through, it rather diminishes their power; and yet I know no effort that any corporation put forward which could bestow such vast blessings upon this great Commonwealth.

I am only anxious that those general principles shall be laid down which will in the future advance these great enterprises and bestow upon the people these unequalled blessings, and this can be done without hazarding any interest. I am familiar with, and for thirty years I have listened to, this kind of alarm. I had something to do with the organization of the great corporation that has bestowed, I do not hesitate to say, a larger share of physical development and general prosperity on this State than any other that ever existed or probably ever will exist. Understand, I do not say or pretend to say that its policy has been faultless; I do not pretend to say that they should for that reason have undue power; but I will say that so far as the head of that company is concerned this day, I would not hesitate to trust the welfare of every man, woman and child in this country in his hands. I believe him to be pure and honest, and that he would not usurp a solitary right. But, sir, this great power may go into other hands. For that reason I would have all the restrictions and restraints and safeguards that can be laid down consistent with the public welfare.

But I only rose, sir, to say that these two sections, four and five, and indeed the general spirit of all this article, is to lock the stable after the horse has been stolen: It is to contribute to the power and influence of corporations now in existence, instead of the wiser and broader and better policy of facilitating the construction of competing lines.

Sir, I happen to know that just at this time a question of furnishing capital to construct great lines from the Atlantic to the Great West is a matter of agitation, in order that there may be a greater restraint upon the railroad power that now exists. I desire to see that movement facilitated and encouraged. Hence it is that I prepared what I thought, as a whole, would be for our State a wiser policy than that found in the article before us. I did that

in great sincerity and I trust with becoming humility, although I had no position in connection with the subject. Yet I have had some experience and some observation in railroad affairs. I contended against their power. I stood alone against the power of this corporation. I stand alone against it anywhere, but what is dictated by my sense of true policy and duty I will do again, though I may stand alone in this body; and I say, sir, that it would be wiser for this Convention to lay down great leading principles to direct a railroad policy in the future and allow the Legislature to attach the details, because it is not possible to do that here.

Furthermore, some of this article which remains to come before us, I do not hesitate to say, is utterly impracticable. What it asserts cannot be carried out by the best practical railroad men in this country. You cannot, on any business principles or principles that lead to success, lay down arbitrarily that per mile tonnage shall be charged the same rate. Everybody knows that who has ever had anything to do with this business.

And now, sir, I hope not only that the amendment will not prevail, but that the section will be voted down also.

Mr. J. PRICE WETHERILL. I desire to occupy the time of the Convention but for a moment upon this subject. I entirely agree with the remarks of the delegate from Clearfield and believe that we should be extremely careful how we vote for an amendment of this sort, because I believe it will probably defeat the very object the gentleman from York has in view. His great objection to the railroad companies seems to be this: That by their ability to endorse bonds, and to buy stock, they will therefore monopolize the carrying trade of this State; but, sir, he has overlooked the fact that possibly just the reverse result will be secured by the scheme he proposes.

Now, sir, let me examine the effect of the position he assumes. There is to-day a great coal road in the State of Pennsylvania, which, by privileges which this section would have deprived them of, has been enabled to build a road and to control a road from the coal mines of this State to Lake Erie. Thereby they have a through line and secure in a measure the monopoly of that trade. Another great coal road, by the simple building of a hundred miles of road, will gain the same advantages and will secure to the State of Pennsylvania the same privileges.

There you have one road, without this section, which has been, and will be perhaps for years to come, quite a monopoly; but if you do not pass this section, another coal company by the simple building of a hundred miles of road, or helping to build it by endorsing its bonds, will secure you a competing line, which would of course be a great benefit to this State, if competing lines are an advantage.

Another illustration has been cited in regard to the Philadelphia and Erie road. After having raised thousands upon thousands of dollars, it was only by the Pennsylvania railroad agreeing to endorse its bonds and to carry it through that it was completed to Lake Erie. That road would not have been built if this section had been in operation at that time, the time of its trouble.

Another point. I have no doubt that every man here has been proud of the American steamship company's work. Nearly all the delegates on this floor have visited those magnificent steamers. There is not a gentleman on this floor who will not say that that was a noble undertaking. The commerce of New York is now controlled by English capital; the commerce of Baltimore in its steamship lines is in a measure controlled by English capital; and yet, sir, by the assistance of the Pennsylvania railroad the American steamship company was established here, and that great line has been brought to a successful issue, and to-day we are all proud, not only in this State, but throughout the country, that we are enabled once more to sail under the protection of the American flag. That has been secured, not by this section, which would have prevented the building of a single ship, but by the liberal policy heretofore pursued by the Legislature in allowing railroad companies in their proper discretion and by the vote of a majority of the stockholders, to say what they shall do with their surplus means and their surplus credit. What harm has been done by it? As the gentleman from Clearfield has said, none that I can see. But what good has been done? Surely the balance is in favor of the good side of the scale and not of the bad.

For these reasons I do hope that we shall be extremely careful before we adopt any such provision as this. Sir, this is a vital question to the State of Pennsylvania. Gentlemen favoring this section have spoken in eloquent terms of

our manufacturing, agricultural and mining interests. They are proud because we are the second, and should be the first, manufacturing State in the Union. What has made us so? Not such a policy as this section would indicate. If this section had been in operation twenty years ago, we would have had a far different result from the magnificent result which this State presents to-day. Our success has been owing to a liberal, broad and comprehensive policy, and the prudent use of the surplus means and surplus credit of the railroad companies of the State. Now, let us be careful, and I think as prudent men, after fully understanding this matter, we will be satisfied that this amendment is not a proper one and will vote it down.

Mr. HOWARD. I do not understand that the chairman of the committee in proposing this amendment, or in any suggestion that he has made about this section, undertakes to speak for the Railroad Committee. I suppose he is at perfect liberty to take whatever course he may think proper in regard to it. So far as I am concerned, as it now stands, I cannot support it. If it had limited railroad corporations to taking no more than say one-third or two-fifths of the stock of another, I might perhaps have supported it; but in this form I am unwilling to support it, and I think it will be far better for the Commonwealth if this entire section is swept away.

Here I will remark that I believe, if adopted, it will come in conflict and do away in a great measure with the virtue of section four. That section is one of vital interest to the people of this Commonwealth. It undertakes to protect parallel or competing lines so that the people may have the benefit of competition, and they have a right to have it. If this section is adopted, then one common carrier company may buy all the stock and bonds of any other common carrier company, and if that is so, it might be the stock or bonds of a parallel or competing line, and while under the fourth section they might be prohibited from directly officering it, yet indirectly, necessarily, they would control it.

Mr. President, with the safeguards provided by the fourth section and the sixth section (for remember those are restrictions that the people of the Commonwealth have never yet had the benefit of) I think this section is unnecessary. We have provided in the sixth section that

the officers and managers of these roads shall not be engaged in mining or manufacturing business connected with their companies. We have taken away the motive and the inducements for them to act fraudulently against the public in these matters. I can see no reason why one railroad should not build another. I do not see why the credit of one railroad should not be used to endorse the bonds of another railroad, and thus go on and build railroads all over the Commonwealth to such an extent as shall be permitted by the Legislature. But there are reasons, strong, good and valid ones, why, when the people have a parallel or competing line, that line shall continue to be a competing line and the public shall have the benefit of it. Therefore I am opposed to this fifth section as reported from the committee of the whole, and I hope it will all be voted down. I do not regard the section as the work of the Committee on Railroads in any sense whatever.

Mr. CUYLER. Mr. President: It is a source of infinite delight to me that I should be able upon a single section to stand on the same platform with the distinguished gentleman from Allegheny who has just spoken (Mr. Howard;) and that that should occur on a question relating to railroads fills me with as much amazement as delight. (Laughter.) What sudden influence has operated to convert the gentleman, what light has fallen upon his pathway as he has journeyed and has brought him to stand where he now stands and to see as he now sees, I am at a loss to comprehend; but I am infinitely delighted that I am able to endorse all that he said—no, not all that he said, but all that he said with reference to the impropriety of this section.

I did not rise for the purpose of going into an extended discussion of this article or of its policy, but simply for the purpose of saying a word or two with regard to this section; a section which, more than any other, is calculated, if it stands in this article, to put a knife right into the heart of the prosperity of the State of Pennsylvania; a section which is based upon ignoring the experience of mankind for the last twenty years, which is designed to undo all that we have done, and to blot out all that we have accomplished hitherto and throw away the whole benefit of the experience we have derived from it. If you look over the statute book of Pennsylvania with refer-

ence to railroads, you will perceive that the great aspiration of the people of this State has been for the expansion of the railroad system. It has been to entice by every possible inducement that could be suggested the expansion of existing lines of railway and the investment of the capital which had been invested previously in railroads to assist in other railroad enterprises. Two-thirds of all the legislation of the State of Pennsylvania on the subject of railroads for the last twenty years has been precisely of that character; and I take that legislation to be some indication of the current of the popular mind and the conviction that existed in the heart of the people of Pennsylvania that it was a wise policy.

Now, sir, if you pass outside of the State of Pennsylvania, I hazard nothing when I say that the same remark is true of every other State in the Union. All their railroad laws have pointed to consolidation, to extensions, to enticements to railroad companies already existing to extend their lines and to invest their capital for the purpose of creating other roads. The same thing is true of England. Consolidation, extension, aid from existing railways to other railway enterprises is shown by the British statute book to have been the current of the British mind and to have been the demand of the British people. And yet we stand here gravely this day in this Constitutional Convention, with one hundred and thirty-three representative gentlemen, selected, I suppose, for peculiar intelligence and peculiar devotion to the interests of this State, to roll back all this current, to say it is all unwise, it is all foolish, it never should have existed, that which the common heart and judgment of the people of Pennsylvania and the people of every other State of this Union, and the people of England, and I fear nothing when I say the people of every country where a railroad system has existed, has declared to be a necessity, is wrong, and we want to write an iron rule in our Constitution so that it shall never exist for the future. Can it be possible that such an absurdity as this is to be perpetrated by this Convention? What mischief has resulted? A State grander in her development today, confessedly, than any other State in the Union, a State having more miles of railway than any other State in the Union, and thousands of miles of railway built by the operation of the very system that this section is intended to condemn

—all this grand development of the State of Pennsylvania, the result of the very thing that we are seeking now to stop! What argument can gentlemen urge in support of any such thing? I have heard none urged. I have seen gentlemen rise here, and almost trembling like aspens and filled with that insane apprehension of the growth of corporate power that seems to distress the minds of so many people; but beyond vague declamation on that subject I have not heard a solitary argument urged which could support the wisdom of such a section.

I cannot believe, therefore, that we are going to shut our eyes to all the experience of this and of other States, that we are going to close our eyes to the vast prosperity which exists in our own State by reason of the very system that this section seeks to condemn and write into the Constitution an iron law that shall paralyze, for future time that very instrumentality which has been grander than any other for the development of the State of Pennsylvania.

Mr. CURTIN. Mr. President: At the risk of wearying the Convention, I desire to say a very few words on the amendment offered by the chairman of the Railroad Committee.

Mr. President, there is no doubt that we are here to restrain the power of railroads as one of the reasons for calling this Convention. But the people of Pennsylvania, if remarkable for any quality, are distinguished for their steady fixed common sense; that is to say, we are a level-headed people in Pennsylvania; and while we should restrain railroads, the people of Pennsylvania do not desire us to arrest the development of the vast wealth which nature has been pleased in her bounty to pour within the territory of the State. Sir, I live in a part of Pennsylvania just in process of development. The Briarean arms from the sea coast are just reaching the rich minerals in our mountains, and our productive valleys are beginning to be so near the market that agriculture remunerates and rewards the labor of the husbandman.

If you look at the topography of the State you will find that the long lines of railroads passing east and west necessarily pass around that part of the State known as the central section, in which I live, and the people of which I pretend in some measure to represent on this floor. The consequence has been that for many years we were without the means of

communication by railroad. The people of that central part of Pennsylvania subscribed liberally, too liberally in many instances, expended their means, so far as they could, to reach the markets of the east and the west, and their contributions were supplemented by the assistance of the older railroad corporations that had gathered means and money from the trade of the richer and more fully developed portions of the Commonwealth. At present, as has been said by the delegate from Clearfield, there are railroads making through the county in which I live. The means of the people are exhausted. They are assisted by two railroad companies, one east and one west.

Now, what principle is it which should be put into the organic law by which in the feeble effort of remote parts of this Commonwealth to make highways to the market and the means of inter-communication, the rich and the powerful should be forbidden to give them assistance? Ask for bread and get a stone. And the part of the State in which the delegate from Potter county (Mr. Mann) lives is yet without the means of communication by railroad; it is a mountainous district, and is far from market. The products of labor, land and mines do not yield as they do to the people of the eastern portion of the State and nearer to market, and they, alike with us, are struggling for the means of rapid transit and communication; and yet we are asked to put into the fundamental law of the State, not an act of Assembly which can be repealed, but to put in as a great living principle of government, that the poor and feeble parts of the Commonwealth shall not be assisted by the rich and powerful and hold in check capital willing to relieve them.

Mr. President, representing a people who require the means of communication, I cannot give my assent to any such proposition. I am not carried away by the wild flight of ideas which are hurled against railroads and other corporations. I know their power, and I am here to assist in placing limitations on that power by any reasonable and just restraints; but it is a reasonable and just ambition to desire our work to be approved by the people of Pennsylvania. We have made reforms now which should commend themselves to the approbation of the sensible people of the Commonwealth, and I have no doubt they will be ratified and approved; but if we choose

to load down our work with restraints upon the riches and power of the great centres of trade and commerce to assist the remote and poor and necessitous parts of the State, I fear very much that we shall add weights and multiply enemies that may encumber us in receiving the approbation of our constituents when our work is finally submitted to their will.

I sincerely trust that the good sense of the Convention will come to the conclusion so justly and forcibly insisted upon by the delegate from Potter. For the many reasons offered in opposition which, with all due respect, I do not believe have been answered, I cannot give the amendment offered by the chairman of the Committee on Railroads my approbation.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Cochran.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. CAMPBELL. I hope the section will pass. We had one of the longest debates in committee of the whole on this section that we had on any of the sections of the report; and after that long debate it was finally amended so as to make it read in its present form, on the motion of the gentleman from Dauphin, who is not here to-day, (Mr. MacVeagh,) and then it passed by a pretty large vote. I do not see that there is any reason why we should reconsider our action and vote the section down at the present time. The sense of the Convention seemed to be against the amendment just now offered by the chairman, but as the section stands there can be no harm in having it passed. I do not propose to go over the arguments that we had in committee of the whole, but hope that we will sustain our previous action.

Mr. T. H. B. PATTERSON. I just wish to recall to the recollection of the Convention the debate on this question in the committee of the whole, and I shall not detain them one moment. They will remember, if they will cast their minds back to the time when this section was under consideration before, that the able president of a great railroad, who has left us, boldly opposed this section on the ground that it simply prevents railroad companies from going into manufacturing enterprises and mining business and other concerns along the line of their road and becoming partners in those concerns and

endorsing the bonds and the obligations of such manufacturing and mining concerns. And he boldly took the position in this Convention that that was right and that it was to the interest of the people of Pennsylvania so to transact their business as to allow the great common carrier corporations of this State to go into private manufacturing and mining concerns; and in that debate other gentlemen of the Convention boldly took the position that that was not to the true interests of the people of Pennsylvania. The question was fully discussed and this was the result of the discussion.

The effect of the section as it stands and as now worded would be—and it was contemplated that this would be the only effect it would have—that it would not interfere with the development of the railroads themselves. This has been so ably debated by gentlemen here that I need not refer to it. I will only say that the section is correct as it is without any amendment whatever. It only prevents railroad corporations from going into private business and controlling the private business alongside of their line, and overshadowing and crushing private citizens, and I ask every gentleman on the floor of this House before he votes against this section to look at it carefully. As it now stands before us, it was adopted by the committee of the whole; the results of its adoption were ably discussed, and the section was adopted after full consideration. Let us adopt the section as it stands, because it will not interfere at all with the development of railroad corporations. It does not interfere with the healthy development of the country, and simply leaves the question of private manufacturing and private mining open to equal competition among the various private citizens of this State.

MR. BROOMALL. Before voting on the section I desire to know what it is I am asked to vote for. By reading it, I find that by its terms no corporation can hold the indebtedness of any individual. If the section means that no individual is to be allowed to become indebted to a corporation, the section ought to have some little more explanation before we vote for it. I find, too, that it provides that no such corporation shall endorse any indebtedness of an individual. If it means by that that if I become indebted for freights to the amount of \$1,000 to a railroad company, and am obliged to give them my note or my check, or any evi-

dence of indebtedness of that kind, that they cannot endorse it over and get the money on it, I want to know something more about it before I vote for it. It looks to me very much as if this section has been very carelessly drawn, or as if it embraces too much. Indeed I have very great doubts whether or not we are not undertaking to cripple future railroad enterprises without at all correcting evils in the management of the present ones, in the most of this railroad article. I have all my life been trying to get the lands of my county covered as far as possible with railroads. I own no stock in any railroad thirty miles long. I am not the solicitor of any railroad, and I have recovered in more suits against railroads than I have ever brought for them, but I have always believed in railroads. I think there are some lands in Pennsylvania that are worth more to build railroads on than for any other purpose. For the first time in my life I find myself in the presence of a community that seems to have had enough of railroads. I never meet any such spirits in every day life. I am afraid we have been frightened with the bug-bear of the Pennsylvania railroad company until we are inclined to hinder twenty other Pennsylvania railroads from rising up in the State to prevent it from being such a monopoly as it is.

Now, sir, the first section guarantees free railroads, and that is right. Let us secure unlimited competition, and it looks to me as if that is about all we can do in the direction of reform in this department. The third section prevents the Legislature from fooling away our right to tax railroads. That is right and wise. The tenth section provides for the payment of full damages for all injuries done by railroads both in their construction and operation, and that of course is wise and proper. I look upon the rest of the article as a part of it unfit for legislation and part of it tolerably good legislation, but none of it adapted to the organic law. I trust that we will not allow ourselves to be frightened out of our propriety, and be induced to prevent the development of the resources of the State by any power that, under proper guards, can develop them, by anything that may have been said against the enormous power of the Pennsylvania railroad company.

The power of the Pennsylvania railroad company is only temporary. It will go to pieces and dissolve itself into a dozen small companies, and the State will be the

better for it. It is but a work of time. Those interested in that railroad may laugh at the prophecy as much as they will, but it will go to pieces, and let it go, but do not let us keep that day off and keep the power in the hands of the present monopolies by preventing future combinations of new enterprises. When we have opened the entire State to railroads everywhere upon equal terms and untrammelled, we have done about all we can do toward restraining and governing the present monopolies.

I trust that this section will be voted down as well as several other sections of the article.

The *PRESIDENT pro tem.* The question is on the section.

Mr. COCHRAN. I call for the yeas and nays on that question.

Mr. CUYLER. I second the call.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Alricks, Baer, Biddle, Buckalew, Calvin, Campbell, Carter, Cochran, Cronmiller, Ewing, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Horton, Landis, McCulloch, Mahtor, Newlin, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Reynolds, Rooke, Sharpe, Simpson, Stewart, Turrell, White, David N., White, Harry, Worrell and Wright—35.

NAYS.

Messrs.—Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Brown, Bullitt, Curtin, Cuyler, Darlington, Davis, De France, Dunning, Edwards, Elliott, Ellis, Fell, Green, Hall, Hanna, Howard, Kaine, Lamberton, Lawrence, Lilly, Littleton, Long, MacConnell, McClean, Mann, Niles, Patton, Pughe, Purman, Purviance, John N., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Walker, Wetherill, J. M., Wetherill, John Price, Wherry and White, J. W. F.—48.

So the section was rejected.

ABSENT—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Corbett, Corson, Craig, Curry, Dallas, Dodd, Finney, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, MacVeagh, McCamant, McMurray, Metz-

ger, Minor, Mitchell, Mott, Parsons, Porter, Purviance, Samuel A., Ross, Runk, Russell, Smith, H. G., Stanton, Struthers, Temple, Van Reed, Woodward and Meredith, *President*—50.

The *PRESIDENT pro tem.* The sixth section will be read.

The CLERK read as follows:

SECTION 6. No incorporated company doing the business of a common carrier, nor the officers or managers thereof, shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation over the works of said company; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.

Mr. FULTON. I move to amend the section by striking out in the second line after the word "carrier" the words "nor the officers or managers thereof."

Mr. HOWARD. We might as well strike out the whole section as strike out those words. That section was made just to cover officers and managers who engage in business.

Mr. FULTON. I do not profess to understand very much about the railroad laws of the State, but in looking over this section I discover that it will very seriously affect the people of my county, and I take it the people of many other counties are in just the same situation. We have a number of branch railroads that our people are very desirous to build. Those roads must be built by the energetic business men of the county taking lead, and it so happens that in a number of instances that I have now in my mind the men who must be the active men and furnish the capital to build these roads are the men who will have most use for them after they are completed.

For example, I know one road now about fifteen miles long that all the people along the line of the road are very much interested in, and in looking around over the people in that country the man whom they all selected unanimously as president of the company is one of the largest manufacturers, owning a large tract of timber with saw-mills upon it on

the line of the road, and he will ship more over the road than any other man there. Now, is it reasonable to suppose that after individuals of that kind put their money into the construction of a railroad and after the people unanimously select them as the men that have the energy and the skill to construct and operate this road, they must either abandon their legitimate business or abandon the road in which they have invested their capital? I could name five or six other instances of the same kind; though it is said—I have heard the objection by several gentlemen here—that these men form rings in the company and that they operate against the interests of the company. The remedy there is simple. Let the company displace them if they misbehave in that position. I have no objection to making the law as stringent as possible and allowing equal rights to shippers over all the railroads, whether they be officers or who they may be, as you have a mind to, but not to amount to a prohibition. We have a provision I believe in the eighth section that will correct the evil that is meant to be corrected here, and I hope that the section will be so amended.

MR. ANDREW REED. MR. President: I am in favor of the amendment of the gentleman from Westmoreland. This section would do very well for a railroad like the Pennsylvania railroad or the Reading railroad that has already been long built, but look at any new railroad, any railroad that has been built within the last three, four or five years, or any railroad building now. Who build those railroads? Certainly the people who want to use them. They are never built as a speculation to make money out of in the first instance. They are built by men who have mines that they wish to develop, by men who have tracts of timber, the products of which they wish to manufacture into lumber. Five or six energetic men who have large tracts of timber undeveloped in a portion of our State desire to manufacture that timber into lumber and get it to market; they subscribe stock and they build the road; and yet we put in this section a provision that they shall not control their own property; they must go and elect somebody else, another person who was not interested in building the road. It might apply to the large railroads that are already built, and not affect them injuriously, but it will have the ef-

fect of crippling every new enterprise in the State.

Men are not going to put their money in a place where they cannot manage it, and if you put stool-pigeons in as managers or other persons who have no great interest to manage these railroads—they are the men who can be controlled by corporations and can be worked in their interest, and who will sell out more readily than if the men who are largely interested had the direction of the road.

Then, again, they are prohibited either directly or indirectly from having any interest in mining or manufacturing articles passing over such road. A director of a railroad living in a town may desire to aid some industry which will benefit the town and build it up, and he is asked to take some shares of stock in it. He cannot subscribe for a single share of stock to any company that would improve his native town, because he must neither directly nor indirectly be engaged in the manufacturing of anything that passes over the road. Thus you will drive some of the best and most active business men of the State from all those enterprises that would build up the State.

I submit to any delegate on this floor in whose district a railroad has been built within the last ten years if the men who own the mines are the men who subscribe to build the road. Are we not crippling them? It may not injure a road like the Pennsylvania railroad, whose officers have enough to do to attend to the road itself, but there are other roads that it will seriously injure. We are indirectly doing that which we would not do directly. As was well said by the delegate from Delaware, the best thing we can do is to make the building of railroads free to all. Then, if a railroad does not act properly, other parties can build another road and we shall have competition. This proposition will shut out such new enterprises.

But it is said by the gentleman from Allegheny (Mr. Howard) that they desire to prevent the formation of "rings" of railroad officers in these fast transportation companies. I am willing to vote for any section that will prevent any person, officer, president or director of a railroad from directly or indirectly shipping freight over that road at a more advantageous rate than any one else. Insert such a clause and you will prevent any such

thing as that; but do not prevent men who desire to develop their own property from managing their own business.

Mr. DARLINGTON. I desire to say a word on this section, and only a word. I cannot conceive a more insane policy than this section seems to me to foster. It appears to suppose that gentlemen who have amassed some capital by manufacturing or mining and who are willing to have the region of country in which they live improved by a railroad, and are willing to contribute their means to it, are not fit to manage it. That is precisely what you assume, that they are not fit to be trusted for fear they will give themselves some special advantages!

Sir, take the small railroad in my own county that runs from West Chester to this place. It has been eighteen years since it started, and the construction of it was largely owing to a gentleman of capital and means residing upon the line of it. He has been a director from that time to this without one cent of compensation, for it has but lately for the first time made a dividend. For eighteen years has that gentlemen been a director of that road. Nobody has complained of any impropriety of his ever having had any advantages in any way in reference to it, and yet it could not have been built without the aid of such as him.

Take another road, the Wilmington and Reading road, gotten up and largely fostered by a manufacturing gentleman of our county, of large means, its president, Mr. Hugh Steel, and who transports over the road of the products of his works more than any other man. It enables him to get them to market; but nobody pretends to say that he has any special advantages by it. Would you deprive him of the privilege of being a director in that road, or I should rather say, would you deprive the stockholders of the benefit of his services when half his time is given to them?

Again, take another road, the Pennsylvania and Delaware, also running through my county, and striking the valuable lime quarries of some gentlemen who contributed largely to the road, and without whose aid it could not have gotten along. They, too, were thought proper persons to be directors of that road.

You cannot lay out a railroad in any community without finding just such men as these, the active business men of the country, who have, by their energy and industry, made some money, and are

willing to improve the country by the building of roads. You cannot, I say, turn to any railroad company in which you will not find some men who are the best business men that you can pick up, in order to control and manage it. Now, why should they not do so? Restrict them, if you please, as the gentleman from Mifflin (Mr. Andrew Reed) says, so that they shall have no special privileges; limit the vast freight lines and express companies, if you please, and I am willing to go with you in that, from all special privileges in running on railroads; but do not deprive the stockholders and owners, those who contributed their money, those most interested in the road, of the privilege of having the best men in the country to aid in their management.

Mr. H. W. PALMER. What has been said thus far has had reference to the first part of this section, and I quite agree with the views expressed, but I have objections to the latter part of the section also, which provides that no incorporated company shall "directly or indirectly engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business."

The objections are that four or five great railroad corporations now possess the privilege of holding lands and mining coal, of which they cannot be deprived, and to pass this section would be to forever prohibit any competition with them. It would be to secure the monopoly in the hands of these companies and to shut out any other railroads that might be built under our free railroad law from coming into competition with them. The value of those monopolies would be enhanced by the operation of this section an hundred fold. If it is the design of the framers of it to restrict the objectionable operations of railroad companies and to restrain corporations for the public good, I fear it will not have that effect.

It seems to me quite essential for the prosperity of the great coal fields of this State that they should be open and free to the competition of all the world. We look with great anxiety and expectation to the introduction of a branch of the Erie railway into the Lackawanna coal fields. We hope that great corporation, now honestly and fairly managed, will

enter into competition there, and that the iron grasp of the companies who have laid hold of most of the lands in that region will be to some extent unloosed. But pass this section and the Erie railroad can never own lands and mine coal there. At the southern end of the Wyoming coal fields we are looking for the advent of the Pennsylvania railroad, and to the time when she shall stretch out a helping hand to that region and come in competition with the Delaware, Lackawanna and Western, with the Delaware and Hudson, with the Pennsylvania coal company, and with other giant corporations that are fast absorbing the mineral lands there, and we expect great benefits from this competition; to enact this obnoxious section would be to strike competition dead. Therefore it seems to me that the interests of the people of these sections and incidentally the interests of the people of the State will not be promoted by the passage of this section. I shall vote against it.

By habit and education I am an enemy of the aggregation and extension of corporate power. I believe no prophetic vision is needed to foretell the time when it will be necessary for the people to strike a sharp and deadly blow at combinations that will be made by corporations to take possession of their government and steal away their liberties. That the railroad kings have assumed the control of the State Legislature and are laying grounds to capture the Congress of the United States seems plain, but it is not, in my judgment, by such measures as this that the swelling and dangerous tide is to be stayed. I would deliver no uncertain and ineffectual blow. When the supreme hour arrives for action, when the servants clothed in their borrowed strength and grown great upon the benefactions granted them shall make their purpose plain, I would send them stripped and shorn into the shades of retirement and restore their misused franchises to the power that gave them.

Mr. COCHBURN. Mr. President: The question immediately pending is the amendment offered by the gentleman from Westmoreland (Mr. Fulton.) The gentlemen who have been discussing the matter have been talking about the section itself, which is not now directly under consideration.

The object of drawing the section in this way was to meet an evil which has been experienced in various parts of the State,

and that is this: The departure of the corporations from their legitimate business and engaging in private business, and engaging by their officers also in private business directly in competition with others who are compelled to transport on the lines of these railroads, and who are injured in their property and their affairs by the competition which is brought to bear upon them, and the disadvantage to which they are put by persons who are in the railroad companies and who prevent them from the enjoyment of equal privileges on those roads.

It must be plain to any one, it seems to me, when you present to yourself the case of an individual who has, for instance, a mine on the line of a railroad. He has opened that mine, and is conducting it and working upon it, and transacting his business to an advantage. Then comes some one or more parties who combine and confederate together, and establish mining operations in competition with him, and being inside of a great railroad, being themselves members of that corporation, and having a large interest and control in it, give the preference to the transportation of their own property and throw every impediment in the way of the transportation of the property of the other party. That is the evil which this section was designed to relieve.

We have always encountered here on every great public question the interest of the small railroads. We have on the one side the small railroad companies begging that they shall not be disturbed; but that you should regulate the large railroad companies. Then when you come to the large railroad companies you are met with the argument that they are the great benefactors of the State and you must not throw the slightest obstacle in their way; that they must be left to have their own way in every thing and on every question because they are the greatest blessing to be found in the Commonwealth. That would be a very good argument for a despotism of any kind. There may be such a thing as a beneficent despotism; there may likewise be such a thing as a beneficent monopoly under certain circumstances; but if you are to make a despotism the rule of government or a monopoly the ruler of the Commonwealth, then certainly you do not act upon sound general principles.

Now, this pending section is to meet that particular case, of individuals who are put at disadvantage by the competi-

tion of the officers of railroads with their employment and their work, bringing upon them often the destruction of their interests, and causing them not only to suspend business, but often to be involved in insolvency and ruin.

Now, sir, I am assured that this is the state of things which has occurred in various parts of this Commonwealth in relation to such interests, and it is for the purpose of protecting the interests of individuals from this unequal competition with parties who have such decided advantages over them that this section was drawn, and that is the reason why I think the amendment of the gentleman from Westmoreland ought not to be adopted.

Mr. HARRY WHITE. May I ask what is the exact question?

The PRESIDENT *pro tem*. The exact question before the Convention now is the motion of the delegate from Westmoreland to strike out the words "nor the officers or managers thereof."

Mr. HARRY WHITE. I have an amendment in my hand which I will offer if this amendment is withdrawn or voted down. I sympathize entirely with the purpose of the delegate from Westmoreland. May I have the attention of the delegate from Westmoreland? I am going to offer this amendment after the word "carrier," in line two. The amendment of the delegate from Westmoreland is to strike out the words "nor the officers or managers thereof." I propose, if he will withdraw that amendment, to add the words "on a railroad exceeding fifty miles in length."

I will explain that in a word. Gentlemen need not get impatient until they understand the precise effect of this amendment.

The PRESIDENT *pro tem*. The delegate from Westmoreland does not withdraw the amendment.

Mr. HARRY WHITE. I will proceed then. Everything the delegate from Westmoreland has said on this subject is exactly right, and it is the duty of the gentleman from Westmoreland, as well as all others representing that region of country, to seek to protect their material interests. I, in common with the Committee on Railroads, sympathize with the great evil this remedy seeks to strike at. The claim is that by reason of the interest of individual officers managing railroad companies and also interested in the manufacture of certain articles and in mining coal, other miners and other manufac-

tures cannot get justice done in their transportation, that there is discrimination against them. This is a great evil and retards the development of our interests. I sympathize, as I apprehend all fair-minded men, with the efforts of the committee to correct this evil. But it has been well said that in seeking this desirable object we should not retard the legitimate business enterprises of the Commonwealth, we should not repress the energy of business talent and enterprise of the country from building railroads.

If you read the section carefully you will see that this principle has been kept in view. You will find: "The officers or managers thereof shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation over the works of said company, nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines or manufactures on its railroad or canal, not exceeding fifty miles in length."

You will observe then here is a saving clause. It was in the minds of the committee of the whole when this provision was placed in the section, that lateral railroads connecting with main lines must be allowed to be owned and constructed by miners and manufacturers. The general railroad law, as far back as 1849, when railroads were in their infancy, allowed the construction of lateral railroads by mining or manufacturing companies, fifteen miles in length. Now, that has been enlarged from time to time, and it seems here that a liberal spirit animated the committee of the whole or the Committee on Railroads, when they authorized a mining or manufacturing company to construct a railroad and transport the products of its own mines on a railroad fifty miles in length. Now, I propose to extend to these kinds of mining companies the privilege of managing their railroads as they may see fit by officers selected from the corporation itself if they desire. This amendment is in entire harmony with the whole spirit of the section, and I apprehend it carries out the idea of the intelligent delegate from Mifflin, who very properly said that if we could stop this thing now and take a new

departure in the Commonwealth, it would reach the Pennsylvania railroad or Reading railroad, who are the objects of some complaint in this regard. This is very desirable, but the provision before aims, I fear, a fatal blow at the business enterprises of the Commonwealth. With this explanation, if the delegate from Westmoreland will withdraw his amendment, for I know the persons now engaged in building railroads in his locality will be protected by the amendment I hold in my hand and propose to offer.

MR. LILLY. It strikes at other interests besides fifty miles of lateral railroad.

MR. HARRY WHITE. That may be, sir, but the amendment I allude to will accomplish the object I, as well as the delegate from Westmoreland, have in view.

MR. CUYLER. MR. President: If the gentleman from York, the chairman of the Committee on Railroads, is correct in his view of the purpose of this article then it seems to me the article is very unhappy in the language it uses to express any such purpose. If the purpose of the article is that which the chairman of the committee describes it to be, then the article is simply declaratory of the common law of the State enforced by repeated decisions of our Supreme Court, not doubted by any professional gentleman, so far as I know, in this age of the world, for if there is any one doctrine that is more purely elementary than any other doctrine, with reference to carrying corporations, over and over again affirmed by our Supreme Court, and not doubted by the profession, it is that they are bound to serve all who are similarly situated precisely in the same way. Our law is full of abundant remedies for difficulties when they arise under such circumstances; our citizens have not been slow to demand their protection, and our courts have not hesitated to grant the relief when it has been asked. It is the common law of Pennsylvania; it is the common law of England; it is the common law of every State in the Union, that a carrying corporation cannot discriminate between those who are similarly situated, but must hold out the same terms and give the same service under the same circumstances, and for the same compensation, to all who are in similar circumstances. Nobody doubts that. We need no constitutional provision for that. The law is well settled. Why write in the Constitution of the State that which is only simply declarative of the common

law of the State as it is to-day? So that if that be the purpose of this section, as described by the chairman of the committee, it were utterly in vain to write it here. It is the law already. Corporations are not restive under it, and courts are not doubtful of their duty and of the obligation that rests upon them to enforce that law.

But this section is capable of and does naturally bear an interpretation that is very far outside of that which the chairman of the committee states, and that interpretation is one which is largely detrimental to the development and to the prosperity of our State. We want to invite capital by every ingenious art that we can devise and apply; we want to invite capital in the State, its investment in our industrial enterprises and its application to the development of our Commonwealth. We do not want to write in the Constitution something that is to keep it out; we do not want to place in the Constitution something that is to prevent the application of capital at those points within our Commonwealth where capital is constantly wanted. Is there any sin in the fact that one who wants to have his capital invested in a particular enterprise happens to have some invested in another enterprise at the same time? Is there any wisdom in a law that would confine a man to the investment of his capital in one particular line of business and say to him, "when your capital becomes abundant you shall not invest its surplus in any other enterprise?" Why apply to a railroad corporation or any other corporation a different rule from that which wisdom and common sense and sound policy have shown to be proper with reference to individuals? Why say to a corporation, "if you have more capital within your control than is requisite for the mere and simple purposes of your company, you shall not use it in the development of the region of country through which you pass?" Why, sir, the Philadelphia and Erie railroad would have disappeared almost from the map had it not been for wise investments of capital by the lessee of that road in the development of enterprises along the line of the road. Such was the condition of the harbor of Erie and of the relations of that city to the great carrying business of the lakes that the reliance of that road came for a time to be of necessity upon the development of the region of country through which it passed. Shall it be said

in the State of Pennsylvania that the assistance granted by the lessee of that road in the development of that region of country was a thing which should not have been, that it ought to have been prevented by a constitutional amendment? A policy so short-sighted, so unreasonable as that should certainly find no defender in this intelligent body of gentlemen.

Take an illustration from our own body. I sit next to one of the most esteemed members of this body, (Mr. Knight,) a gentleman who is president of the American Steamship Company, who has a large manufactory of sugars, who has furnished to the vessel which has gone out and returned, and will furnish to that vessel on her next trip a very considerable portion of her cargo from his own manufactories; and yet this section would have prevented that. What wrong would be done? Who is damaged? What interest is harmed by the ability of this gentleman, who has invested some of his surplus capital in this steamship enterprise; what harm is done to the people of this Commonwealth by his shipping a few hundred casks of molasses or sugar by one of these steamers? Yet this constitutional provision would prevent it.

I ask, then, gentlemen to pause and look at this in the simple light of common sense, and show me where the mischief is. What is there that calls for a remedy? What wrong has been done or can be done to the people of this Commonwealth by the investment of the surplus capital in the development of the great material interests of the Commonwealth; and yet that system is to be stopped by just such a section as this; for that is the natural meaning of the section, or if its meaning be that more restricted interpretation which the gentleman from York puts upon it, and which is not its actual meaning, then I say the section is utterly unnecessary, because that is the common law of the State. Does any man complain? Have we heard that in this Commonwealth there are officers of corporations who are engaged in other business, and who have a personal benefit or profit, denied to others, from the transportation of their own manufactures over the road? I know of no such cases. I have heard of no such cases. I do not believe any such exist.

There is then, Mr. President, no evil which the section is calculated to guard against, and there are vast interests in

this Commonwealth upon which its enactment would inflict a most incalculable injury.

Mr. ARMSTRONG. The evil which this section is intended to correct is stated by the chairman, the gentleman from York, to be that railroad corporations engage in business in competition with individual enterprise. If this evil exists, as it doubtless does, to a limited extent, let it be corrected in terms and by the Legislature, where its correction properly belongs, and whose power is ample. But the evil which would be perpetrated by the adoption of this section is infinitely great as compared with the evil which the learned chairman suggests would be corrected. There are in Pennsylvania hundreds of thousands of acres of coal and timber and mineral lands which are yet wholly undeveloped, and which must be reached by transportation facilities before they can be of advantage either to individual owners or to the State at large. Now, that which has been will be, and let us learn something from our experience. It occurred to me in thinking over this matter that a vast number of railroads have been built in Pennsylvania based exclusively upon the intent of owners to develop their lands. The Snow Shoe railroad, in Centre county, which was built to the Snow Shoe lands, of which at one time the gentleman from Centre (Mr. Curtin) was an owner, and with which he is perfectly familiar, was built for this exclusive purpose. So also the Millersburg railroad was built for a similar purpose. The Northern Central railroad is a trunk line, but passes within reaching distance of the Shamoken coal region, from which it draws a large percentage of its trade. The Millersburg railroad has been built by the owners of coal lands in order to bring them within the reach of transportation upon the Northern Central railroad, connected as it is both with the lakes and with the seaboard. So also the Shamokin railroad, running from Sunbury to Shamokin, was organized and constructed exclusively by capital interested in the development of lands owned by individuals who became the stockholders in that road. The Williamsport and Elmira railroad, which has now become a through line, was originally built under its charter from Williamsport to Ralston, and Matthew Ralston, of this city, invested in that railroad almost his entire fortune for the purpose of

reaching his coal lands, which lay near that point. The Lehigh Valley railroad was built for the purpose of reaching the Lehigh coal fields, and has now extended to a trunk line of great value to the State. If you look at Schuylkill county it would be easy to name twenty or thirty, and possibly forty, railroads which have been constructed there for the sole purpose of reaching its coal fields and bringing them within the limits of transportation on the main line of the Reading railroad. The Delaware, Lackawanna and Western railroad is another line that was constructed to develop private lands and bring their mineral wealth within reach of markets. It was organized and built by the owners of the Delaware and Lackawanna Coal and Iron Company lands. The particular interest of other land owners led to the construction of other railroads to reach the coal and iron which sought development in the great and rich county of Luzerne.

But it is useless to go over the multitude of instances which could be mentioned. These occurred to me on a very cursory examination. Doubtless every gentleman on this floor knows of a great number of cases in which the sole moving inducement to the construction of a railroad has been the intent to develop the private interests which lay at the terminus or along its line and to bring these interests into close connection with transportation upon the main lines. The same influences that have been at work in the past are in full operation now. The same interest, the same motive exists today for the extension of railroads for the purpose of developing private interests in other portions of the State and bringing them into convenient channels for transportation. This process must necessarily go on until the entire mineral regions of Pennsylvania are fully developed.

All this would be greatly embarrassed, if not rendered impossible, by this section, because its effect would be to take away the leading motive for railroad construction. The moment a road is built this section would either prohibit such road from becoming a common carrier in the sense of transporting either the persons or property of other persons, or would confine it to the transportation of the products owned by such railroad company alone, to the great detriment of the public and to their exceeding great inconvenience.

In looking over this section, I throw these ideas out suggestively and not by the way of exhaustive argument, for I bear in mind the stringent limitation of debate. I can see an immense deal of mischief to be wrought by this section, while the amount of good to be accomplished by it, is comparatively small indeed. The evil to be corrected by it is very slight; the evil which it would do would be immense and far reaching.

Then, again, it is to be remembered that the coal lands and mineral lands of various kinds which require development are largely owned by capitalists outside of Pennsylvania. When these lands come to be developed, capital from Boston and the New England States, where there are owners of very large Pennsylvania properties of this kind, and from New York, and from many other quarters, must be employed, and thus you would concentrate this foreign capital in Pennsylvania largely to the development of our taxable property and of the material interests of the State in every regard. I cannot but believe (and I have certainly endeavored to look with candor and fairness upon this subject) that this section has been prepared in view of what was supposed to be the powerful influence of the Pennsylvania railroad company. That company, I would venture to suggest, has been too much in the minds of this Convention in the consideration of this article. It is framed in a mode which is intended to restrain that company, and to restrain them unnecessarily, whilst at the same time it does a vast deal of evil in restricting other interests which perhaps the Railroad Committee did not intend to reach. I believe it is wiser and better to adopt a few restrictive clauses of general and comprehensive character and leave all details upon the subject to the Legislature, where it properly belongs, and that we would act wisely in voting down not only this but some other sections which we shall reach in the progress of the consideration of this article.

I think this whole section ought to be voted down. Then let us come to the consideration of the others with a view to what the great interests of the State require and not as to what particular restraint might be placed upon the Pennsylvania railroad company. Their interests are secured already. We can do but little to touch them; but we can do, in the effort, and if this article be adopted.

as it stands are likely to do, a vast amount of evil to the general interests of the State.

Mr. LILLY. I have but very few words to say upon this subject in addition to what has already been said by the gentleman from Philadelphia (Mr. Cuyler) and the gentlemen from Lycoming (Mr. Armstrong.) They have left very little to be said on this subject, and I think that any one who has listened to their arguments ought to be satisfied that this section should not be adopted by this Convention. There are some things in the first part of the section which I heartily approve, but if the section were adopted the men who have perfected these great improvements in Pennsylvania, not the Pennsylvania railroad alone but a thousand others, will be prevented from participating in the control of their own property. It was simply by allowing in this respect that perfect freedom that always should be given to capitalists in the management of enterprises their own capital has constructed, that so many small railroads have been built in Pennsylvania, and by consolidation and extension have become trunk roads sometimes of three hundred miles in length. These roads, although trunk roads now, still represent the same interests which they represented when originally constructed, and much of their prosperity as main lines depends upon the successful development of these local interests.

If you adopt this section you will so interfere with these particular interests that you will seriously cripple the usefulness of these trunk lines. I speak of this more particularly because I well understand the destructive influence this section would exercise upon the development of the mineral wealth which lies along the route of the Lehigh Valley railroad. With that railroad I am most familiar, and no act of ours could more injuriously affect the mineral wealth of the section through which it passes than the adoption of this section. I know nothing about the Pennsylvania railroad company, and do not know how true are the evils which have been complained of in reference to that company. I suppose they have been greatly exaggerated, but even if they were true I never would consent to attempt to correct them by striking at the material interests of the entire State. I would throw around the management all the safe-guards to prevent favoritism, and make any discrimi-

nation in favor of directors, officers or stockholders, and make any infringement of the same a penal offense, punishable as such by law. I will go as far as the farthest in that direction. I cannot, nor will not, give a vote that will cripple the great interest that has made the Commonwealth what it is in material prosperity.

Mr. HOWARD. I have listened to the arguments that have been made against this section in particular and the whole railroad report in general. Very little has been said upon the specific proposition that is now before this Convention, namely, the striking out of this section of the words, "nor the officers or managers thereof."

I regard this section as one of the most valuable, if this Convention will adopt it, that will be presented to the people of the Commonwealth for their ratification. The fact that officers of railroads have become interested in special business along the line of their roads, to the great detriment and injury of other individuals that do not have the facilities enjoyed by these railroad officers, has been a common complaint, coming up from one end of the Commonwealth to the other. Let delegates understand that this section does not strike at manufacturing corporations nor at the coal companies, in which, perhaps, my friend, the delegate from Westmoreland, (Mr. Fulton,) is interested. It simply provides what I believe should be declared, that officers of such companies as are declared to be common carriers, companies engaged in the business of carrying the property of all men, should not be permitted to be engaged in mining and manufacturing enterprises along the line of their railroads. That is simply what is prohibited by this section. The officers and managers of these corporations are prohibited from being engaged in the production of articles that will come directly in conflict with articles produced by citizens outside of these corporations, who have not the facilities which they have under their control.

To permit an officer of a railroad to be engaged in any manufacturing and mining business along the line of that road leads him to be dishonest. It leads him to act dishonestly to the community because the interest which would lead him to deal fairly with the people is brought in contact with his own pocket. It makes him dishonest towards the

stockholders of his corporation, and these officials defraud their stockholders just as much as they do the public at large, because a manager gives special favors as an officer of the company to himself as an individual, and the loss both of the stockholders and of the public is his individual profit.

It was only a few weeks ago that I heard the gentleman from Lycoming state upon this floor that he had been very largely engaged in a coal enterprise that was good for nothing. The enterprise was located along the line of a railroad. It had at hand all the facilities for conducting a prosperous business, but they could not procure those facilities because no railroad official was personally interested in the success of the company. As soon, however, as the gentleman from Lycoming sold his stock some of the railroad officers became connected with the enterprise, gave facilities to themselves that they would not give to others outside of their ring, and the enterprise became valuable and its stock rose in the market. We know perfectly well that men have been broken up, have been ruined, and have been driven out of the coal trade west of the Allegheny mountains because they were not in the officers' ring. This is as much a matter of common report as that there is such a city as Paris. The matter was investigated by the Legislature, and an examination made for the purpose of showing under oath how this thing was done, how these special rates were arranged, and how these companies changed their rates, not only every day, but a dozen times a day, upon a mere telegraphic dispatch.

This amendment should be voted down. To strike out these words is to strike down all that is valuable in the section. We create a railroad company for the public benefit. We say it is a common carrier, that is, a carrier for everybody, and yet here it is asked that we shall say its officers may go into business pursuits, mining and manufacturing articles, along the line of the road to come into competition with individuals. It is a stultification on the face of it. It is an outrage, and I am surprised that any delegate upon this floor would defend a doctrine so monstrous and so unjust, upon the miserable plea of bringing money to the Commonwealth. I would like to know if other people have not money, and I do not care how much money individuals may have, if an officer, an executive, official or man-

ager of a railroad company engages in the same business with them he will crush them out. The railroad officers have done it and will always do it, unless prevented by this section of the amended Constitution, and it will be an outrage and a shame if this Convention shall now strike out the vital words of this section and leave the people of this Commonwealth at the mercy of the executive officers of railroads, who will always have as an inducement to oppress the people their personal profit. The people cannot compete with railroad officials when they are interested in manufacturing or mining companies, and these railway officials always become interested in them. There will always be inducements held out to some executive officer of a railroad company to become connected with these private enterprises, and if the matter cannot be arranged in any other way, they will give him an interest in order to induce him to furnish them with special rates and favors in transportation.

These are simply facts, and the Convention knows them as well as I do, and whatever the Convention will do, I hope they will not strike out these words. Let us vote down the amendment and then let us adopt the section.

MR. J. PRICE WETHERILL. I just desire to say that I think we all now fully understand the length and breadth of this section and it is virtually this: That no manager of a railroad shall, directly or indirectly, engage in any mining or manufacturing business. Why should we confine that to mining or manufacturing? Look at it! Allusion has been made to my colleague, Mr. Knight, who is engaged in the manufacture of sugar. He could not ship his sugar over the Pennsylvania railroad because he is a director in that company, yet another director could import sugars from Cuba and ship that article to Pittsburg. What would be lawful for one director would be unlawful for another. Is that logical? Is that proper? Is that right? Is that a correct principle?

Why should you confine the provision of the section to mining and manufacturing? Why not extend it to importing and to every other business where goods are required to be transported to the West, so that every business man engaged in shipping goods to the West upon a railroad or transportation company shall be debarred from being a director in that corporation? If that is the object of this

section, I can understand very fully why the members of a Convention containing one hundred lawyers would favor a proposition which would make the position of a railroad director a comparatively easy thing for them to secure. Why, sir, if this section be adopted, you will take from the management of our railroad companies the men who have made these enterprises successful, the best business men of the country, the men who know all about the wants of the railroad companies and the transportation wants of the State and of the country, and you discriminate in that way unwisely against the best business men, in my opinion, to the injury of the corporations. If we want to act fairly we should place all business men upon an equal footing, and extend the operations of this section to every man doing a jobbing or manufacturing business or who is engaged in importing goods which are shipped over any railroad. If you want to extend the effect of this section to one class or to two classes of business men you should extend it to all, and then thereby you will drive all business men out of the railroad direction of the Commonwealth, and you leave the railroads of the State entirely in the management of either professional men or men of leisure. I suppose the one hundred lawyers who compose this Convention would not object to that, but I regret that I hold the opinion that such a result would not be perhaps very desirable.

Mr. BUCKALEW. The argument of the members of the Railroad Committee on this question is based upon the ground that the words which this amendment proposes to strike out of the section are its material part. The amendment proposes to strike out the clause which provides that no officer or manager of a carrying company shall himself manufacture products or produce them for shipment over the road.

Now, sir, I should like to know of what value this provision can be as a check, in view of the plain fact that such person engaged in mining or manufacturing instead of putting himself into the board of management can put his attorney or his friend into the board to serve his interests there. Holding stock of the company, he makes or assists in making the directors and managers by his vote. The check is quite illusory; it amounts to nothing. It can be evaded as easily as a man can turn his hand, and if there be no value in this section except in this clause of it, it is, in

my judgment, an unfit one for insertion in the Constitution.

When I propose to strike at corporate bodies to prevent abuses or with the avowed object of preventing abuses, I desire that my blow shall be effectual for the purpose in view. It is the worst policy in the world to simply worry and anger without limiting the power or abuse at which we strike; and that would be simply the effect of this most remarkable and much lauded clause.

Now, sir, there is but one other thing in this section, and that is that the carrying companies shall not engage in the business of mining coal or in any manufacturing business, or any other business except that of common carriers. Sir, I was originally, many years since, when I was concerned in the enactment of laws, in favor of that policy; but matters do not stand now in our State as they stood twenty years ago. The case has entirely changed. I recollect standing for several sessions in the Senate of this State resisting the grants of mining privileges to railroad companies in the county of Luzerne, and succeeded in keeping away from that county legislation of this character. I thought that the great railroad lines should be carrying lines, pure and simple. But, sir, the tide of self-interest or, if you choose, of improvement, has passed over all those limits, and now the very heart of our great coal fields is in the hands of powerful corporations having their seats of organization at the cities of Philadelphia and New York, and it is not proposed to limit them, to place upon them any restriction by so much as the weight of a feather. While the Reading railroad company, penetrating into the mountains of Schuylkill and Northumberland and holding many thousand acres of land, can mine coal from it and ship it to Philadelphia and New York and to all the other points where markets are open to her, while the Lehigh Valley railroad can do the same thing in two of the other great coal fields of the State, and the Delaware and Hudson canal company and the Delaware, Lackawana and Western railroad company in the coal fields of Luzerne, now you propose to take a solemn pause and to lay down a great and salutary principle in the Constitution which will do what? Limit them? No, sir, but limit any competition against them hereafter, and that is introduced to us by the Committee on Railroads as the specific which is to cure all our business

ills in connection with the management of railroads in this State.

I do not think you will accomplish anything useful by this section. This section will only be one of irritation, a matter of dispute and discussion. Here we have it. It will be debated before the people, and in the courts of law possibly; and yet out of it, in my judgment, you will get no substantial good, no limitation of abuse, no protection of the business system of the State in connection with the transportation of its products to market.

While I stand, as I have ever stood, entirely free from any connection with corporate bodies in this State, free from their influence or association, owing fealty and fealty alone to that portion of the people represented by me on this floor, I still refuse utterly to give false, hypocritical and buncombe votes upon questions of this kind announcing my hostility to corporate abuses. I refuse to bow my head before any such imposture as this and similar sections in this article.

Mr. T. H. B. PATTERSON. Mr. President—

The PRESIDENT *pro tem*. I think the delegate has spoken.

Mr. T. H. B. PATTERSON. No, sir, I have not spoken on this amendment.

Before the Convention votes on this question I wish simply, and I feel called upon after the able arguments that have been made in opposition to it, to ask the Convention for a moment to reflect on the truth that has been stated.

The learned gentleman who has just taken his seat has announced boldly his opposition to all limitations upon common carrier corporations taking part in the private business of this State. He places himself broadly upon that platform, that because in the past common carrier corporations of this State have been allowed to go unlimitedly into all other branches of business against all the former rules of corporation grants in any other country under heaven, it is too late for the remedy proposed in this section.

Mr. BUCKALEW. I rise to explain. I disavow having made any such declaration as that which the delegate imputes to me.

Mr. T. H. B. PATTERSON. I simply refer to the statements that the gentleman made in the debate, and I refer to the report of that as it will appear on the debates. If I have mis-stated him I am mistaken, but I hold that I have not.

The principle that he announces covers the whole ground that I claim it covers. The State of Pennsylvania in the past has made the mistake of granting to corporations the power to go into all sorts of business at the same time. Instead of limiting them to one line of corporate business, as was originally the intent of corporate existence, it has made the mistake with many of these great railroad and common carrier corporations of allowing them privileges in their charters which enabled them to go into branches of business outside of their legitimate object of creation, and has allowed them to interfere with the development of the individual growth and the healthy business of this State.

The gentlemen who have argued the other side of this question—and it has been argued on that side almost exclusively this afternoon—have taken the broad ground that because this mistake has been made, therefore this Convention, and certainly no other power beneath this Convention should ever undertake to check them—if this mistake has been made and certain giant common carrier corporations have grown up with these powers and have got the people of Pennsylvania and the State of Pennsylvania in their grasp, then the position of such gentlemen is that we must not attempt to correct this mistake, because by so doing we shall prevent other corporations from getting similar privileges. That is the logic of their argument. Because we have traveled so far in this dangerous way therefore we must never take a step in the right direction, because in so doing we might unsettle the relations of corporations and might give an existing corporation an advantage over the future one.

Now, Mr. President, I ask this Convention to stop a moment and calmly consider whether that is the real state of this case. Are the advocates of railroads in this House speaking so vehemently and moving earth and heaven as they have been doing to defeat this section because it is futile? Men who have seen as much of human nature as the men who compose this body are not to be deceived by such flimsy pretences as that. Men do not fight shadows; they do not contend against provisions that will not hurt them; they do not get up here and make arguments and bring forth able advocates to represent their case merely to prevent

those provisions being adopted which would be futile.

The section here strikes right at the evil. It says that railroad companies and other common carrier corporations shall not go into mining and manufacturing along the lines of their road, which are the main pursuits in which they engage, to the detriment of private enterprise.

Now, Mr. President, we do not propose to interfere with other lines of pursuit, because they are more general and are not generally carried on in such concentrated and powerful corporations as mining and manufacturing. There are no complaints coming up here with regard to railroads engaging in other pursuits, but with regard to their controlling the mineral wealth of this State along both sides of their roads, gradually going into the important branches of manufacture in using that mineral wealth, we have heard from every section of this State the loudest complaints. And this section proposes to remedy that evil, to say to the legitimate common carrier corporations of this State that they shall confine themselves strictly to the object for which the people of Pennsylvania intended to create them, and to say to them that they shall not go on this side and on that to take possession of the wealth and minerals and property and real estate of this State and monopolize them, against individual competition which is healthy and which it is the true interest of this State to foster.

Mr. President, this section was adopted as one of the sections of this article in committee of the whole. The Railroad Committee are not responsible for this any more than every delegate on the floor of this House. It was adopted after full deliberation and debate of days, and it was adopted as one of a system of sections; the twelfth section of which provides that all corporations now in existence in this State shall not have any more beneficial legislation from the State without accepting the provisions of this section. That is where the shoe pinches on the old corporations. That is the section which makes this section efficient in reaching all the corporations in existence in this State to-day. Furthermore, this section provides also that corporations of this character shall not hold real estate for any other purpose than the legitimate object of their own common carrier existence. I should like to ask the gentlemen who say that this section is futile in

reaching that object how they get rid of that restriction?

Mr. MACCONNELL. Will the gentleman permit me to interrupt him for a moment?

Mr. T. H. B. PATTERSON. Certainly.

Mr. MACCONNELL. Section six of the article on corporations reads in part in this way: "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." That section we have already adopted. It seems to me unnecessary, therefore, to repeat it here.

Mr. T. H. B. PATTERSON. That section was adopted unfortunately in the language in which it is. It does not cover the ground that it might have covered if the committee that reported it or the Convention had properly amended it. If it had provided that no corporation should go into any other business than one business authorized by its charter, it would have covered a great deal of ground that it should have covered, and would in a great measure have dispensed with the necessity for this section; and if this section should be adopted, we can so consolidate the sections as to reach that object.

But the misfortune of the case is that the Legislature of Pennsylvania, under the enlightening influences that are brought to bear upon that body by these corporations, have authorized corporations to do anything under heaven. They have not limited them to one line of corporate existence, but they have given charters which are in existence to-day which authorize corporations to do anything that a man can do, and more too, because they enable them to do all those things with the advantage of unlimited life; and that is what delegates on this floor must look at. They must remember that these corporations come into competition with individual enterprise without limit of life at their back, and they can pile up dollar after dollar, build railroad after railroad, mill after mill, manufactory after manufactory on to eternity. There is no end to corporation existence, and the corporations in Pennsylvania have been chartered to do every kind of business under the same corporate existence. I say this is an evil, and we must stop it somewhere and by some means. No other nation under heaven has ever given this power to corporations, and no other nation is now suffering un-

der their power as the people of the United States are to day. There must some stop put to it.

Now, we do not propose to interfere with the stockholders of these corporations going into any business they please, but we simply say that it is for the healthy interests of this State that the management of these public corporations should be conducted by men who make it a business, and that they shall keep their hands off the other businesses of the State.

The PRESIDENT *pro tem.* The gentleman's time has expired.

Mr. COCHRAN. I ask for the yeas and nays on the pending amendment offered by the gentleman from Westmoreland (Mr. Fulton.)

The yeas and nays were ordered, ten delegates rising to second the call, and being taken resulted as follows:

YEAS.

Messrs. Achenbach, Armstrong, Baer, Barclay, Bigler, Black, Chas. A., Boyd, Broomall, Brown, Bullitt, Corbett, Cronmiller, Curry, Curtin, Cuyler, Darlington, Davis, Dunning, Edwards, Elliott, Ellis, Fell, Fulton, Hall, Hanna, Kaine, Lamberton, Lawrence, Lilly, Littleton, MacConnell, McClean, Mann, Niles, Palmer, G. W., Palmer, H. W., Patton, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry, White, J. W. F., Worrell and Wright—54.

NAYS.

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Buckalew, Calvin, Campbell, Carter, Cochran, De France, Ewing, Funck, Gibson, Gilpin, Guthrie, Horton, Howard, Landis, McCulloch, Mantor, Metzger, Newlin, Patterson, D. W., Patterson, T. H. B., Reynolds, Rooke, Sharpe, Simpson and White, David N.—29.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardley, Bartholomew, Beebe, Black, J. S., Bowman, Brodhead, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Dallas, Dodd, Finney, Green, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, Long, MacVeagh, McCamant, McMurray, Minor, Mitchell, Mott, Parsons, Porter, Ross, Runk, Russell, Smith, H. G., Stan-

ton, Stewart, Struthers, Temple, Van Reed, Woodward and Meredith, President—50.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

Mr. COCHRAN. I move to amend by striking out after the word "articles" in the third line the words "for other persons or corporations." I offer this amendment because these words were inserted in order to meet an objection which had been raised to the clause which has just now been stricken out and with a view of modifying it to meet the views of some who thought that that clause was wrong. The clause itself being stricken out, there is no occasion for keeping in those words, "for other persons or corporations." The section with that amendment made, would read: "No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over the works of said company."

The amendment was agreed to.

Mr. S. A. PURVIANCE. I ask for a division of the section, ending with the word "company," in the fourth line.

Mr. H. W. PALMER. I do not see that it is divisible at that point. I do not see that the remainder of the section would make sense.

The PRESIDENT *pro tem.* It would have to be amended afterwards to make the second branch sensible. The first division, however, is before the Convention, ending with the word "company," in the fourth line.

Mr. CUYLER. I call for the yeas and nays.

Mr. J. M. WETHERILL. I second the call.

Mr. COCHRAN. The first division of the section itself being before the Convention, I want to make a few remarks on the subject of the section and in support of it.

This section is not, as was represented by the gentleman from Columbia (Mr. Buckalew) in his speech, intended as a specific to cure all our business ills. It would take more than is contained in this section to accomplish such a purpose as that, and certainly I never intended to represent it so in any remarks that I made before the Convention.

I confess, Mr. President, that I cannot understand what the gentleman from Columbia meant when he spoke of a vote given on this section as being false, hypocritical and for buncombe. Sir, the friends

of this section support it with earnestness and sincerity. They intended it for a good purpose, and they do not vote for it for false, hypocritical or buncombe purposes.

The proposition before the Convention has been assailed from various quarters and for various causes, and it is impossible to discuss this proposition at length in the short time which is limited to any speaker. But, now, on this first division, where is the injustice or the wrong in confining these transportation companies to the business and the object for which they were incorporated? Where is the error in requiring that they shall not enter into and overwhelm with their competition the business of individuals throughout this State? Is the individual citizen nothing? Is the corporation everything? Is there to be a power vested in these corporations which they can wield, and which, as it has been asserted here this afternoon, they have wielded to the injury and the wrong of individuals who were dependent upon them for the means of transportation? The very privileges which were reposed in them by the Commonwealth for the purpose of promoting the benefit of its citizens have been warped and diverted to the injury of its citizens, and can be so warped hereafter, unless they are restricted by a provision such as this.

Now, sir, if there never had been a case in which such injury had been wrought, still the fact that under the present condition of our legislation and of the powers vested in these corporations such injury may be wrought, is a reason why we should protect the people against such results. Why, sir, we have heard the gentleman from Columbia tell us how he voted for years to prevent the introduction of a policy of this kind in the affairs of the State; and is that policy, which was wrong then, any better now? Because we have taken a wrong step, shall we never retrace it? What is the remedy proposed by those who do not deny the evil and the injury? The remedy they propose is simply competition, competing lines of railroad. Why, sir, no more delusive conceit, in my judgment, than that ever was entertained! What do your competing lines of railroad amount to, and what have they amounted to? They simply amount to this: That they fight each other until the one finds that it cannot devour the other and then they

"First endure, then pity, then embrace."

That has been the history of competing lines of railroad in this State. Why, sir, for nearly thirty years we knew of a warfare between two great railroads leading eastwardly from Pittsburg, one southerly, and the other more towards the middle of the State, and their opposing workmen almost came to blows; but since the time I believe that this article was under consideration in committee of the whole, when the courts came in and decided the dispute, what was the next result? Why, those two very railroad companies agreed with each other, and settled upon a single rate of tolls and transportation. Such is the information I have from the public journals of the day.

What is then this great principle of competition, what does it amount to? It amounts to nothing. Capital is selfish, and understands its own interests, and it is *not going to fight beyond that point* where it has a hope of making gain or profit; and the minute that two competing lines running in the same direction, or running from the same point to different points, find that their conflicts are no longer profitable and that the one cannot devour and destroy the other, that minute the competition ceases, and they who are enemies at first become friends and allies, and the parties who suffer by the formation of this "holy alliance" are the people who are dependent on these corporations for the transportation of their goods to market.

The history of competing lines in the State of Illinois verifies what I have said here. They undertook to counterbalance the evils of their railroad system, the evils under which the people groaned and complained in that State, by constructing competing lines, and the result was that those lines were scarcely finished and their works in operation before the competitors became associates and a common toll-sheet was adopted regulating the freight and passenger traffic over their roads.

Mr. President, this Convention is called upon to do something in regard to the protection of the public interests in this behalf, and this section proposes to do three things. It proposes, first, to prevent transportation companies from engaging in the business of mining and manufacturing, business which is certainly alien to all the objects for which they were originally incorporated. Sir, shall we be told here when we undertake to accomplish a purpose of that kind, that

we are simply giving false, hypocritical and buncombe votes? Is that the way to meet that which is at least an honest effort to correct what has not, as I understand, been denied to be an evil of at least some magnitude? Is that effort to be so stigmatized when the interests of the public are involved in a question of this kind?

Mr. President, certainly there can be no ground for raising any objection to that clause in this section which is now immediately pending before the Convention.

Now, what more does the section propose? It proposes to prohibit corporations from holding any real estate which is not necessary to carry out the original design of the corporation, and to enable them to transact their proper business. What is there wrong about this? Do you want to put the real estate of Pennsylvania

into mortmain? Do you want to have it all engrossed in the hands of corporations? Is there to be no restraint put upon this at all? What occasion have transportation companies with real estate, except the real estate which is necessary to enable them to transact the business permitted to them under their charters?

The PRESIDENT *pro tem.* The gentleman's time has expired.

Mr. CAMPRELL. I move that we adjourn.

Mr. H. W. PALMER. I move that the time of adjournment be extended until we take the vote on this section. ["No." "No."]

The PRESIDENT *pro tem.* The hour of six having arrived, the Convention stands adjourned until to-morrow at nine o'clock.

ONE HUNDRED AND THIRTY-EIGHTH DAY.

FRIDAY, *July 11, 1873.*

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

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

PETITIONS.

Mr. FULTON presented the petition of citizens of Westmoreland county asking for the recognition in the Constitution of Almighty God and the obligation of the Christian religion, which was laid on the table.

LEAVES OF ABSENCE.

Mr. H. W. PALMER asked and obtained leave of absence for Mr. Davis and also for himself for a few days from to-day.

Mr. WRIGHT. I had occasion to ask leave of absence for myself a week ago to-day. I did not then avail myself of the privilege. I now renew the request for leave of absence for myself for a few days from to-day.

Leave was granted.

Mr. BROOMALL asked and obtained leave of absence for himself for a few days from to-day.

Mr. CORSON asked and obtained leave of absence for Mr. Ross for to-morrow.

PAY OF OFFICERS.

Mr. PARSONS submitted the following resolution, which was read twice:

Resolved, That the Committee on Accounts and Expenditures be requested to report a resolution directing warrants to be drawn for the payment of the clerks and other officers of the Convention for one-fifth of their compensation.

Mr. DARLINGTON. I move to refer the resolution to the Committee on Accounts.

Mr. HAY. This is a resolution of instruction to that committee. It does not need any reference.

Mr. PARSONS. That is all. The clerks and other officers of the Convention have already received three-fifths of their pay, and this resolution is simply a request to the Committee on Accounts to report a

resolution directing warrants to be drawn for an additional one-fifth.

The PRESIDENT *pro tem.* The question is on the resolution.

The resolution was agreed to.

SUBMISSION OF THE CONSTITUTION.

Mr. BUCKALEW. I offer the following resolution, to lie on the table:

Be it resolved as follows: *First*, That when the article on railroads shall have passed second reading, the Convention will adjourn to meet again on the 15th day of September, at ten o'clock A. M.

Second, That articles passed on second reading, including the legislative article, be reprinted as amended; and that three thousand copies thereof be printed in pamphlet form for general distribution.

Third, That this Convention will submit the new or revised Constitution prepared by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next.

The PRESIDENT *pro tem.* What order will the Convention take on this resolution?

Mr. BUCKALEW. I desire to state that I shall call up the resolution hereafter. I do not wish to take it up at this moment.

The PRESIDENT *pro tem.* It will lie on the table.

ADDRESS TO THE PEOPLE.

Mr. HARRY WHITE. I offer a resolution, to lie on the table:

Resolved, That a committee of one from each Senatorial district be appointed to present the result of the labors of this Convention to the people of the State by preparing an address to accompany the new Constitution and the use of such other means as may be necessary to secure a proper consideration of the same by all the voters of the Commonwealth, and that such committee shall so present any article when it shall have passed through third reading.

The resolution was laid on the table.

PERSONAL EXPLANATION.

Mr. BIGLER. I desire to make a personal explanation, which I believe is al-

ways in order. I find by the newspaper report of my remarks yesterday I am made to say virtually that I would not hesitate to trust the welfare of every man, woman and child in the State to the c the Pennsylvania railroad company. I did not say that. What I did say was in reference to the head of that company, Mr. Thomson. I did say that I would not hesitate to trust the welfare of every man, woman and child in the State to his care, because I believe he is pure and honest and would usurp no man's rights. That is what I meant to say.

RAILROADS AND CANALS.

The PRESIDENT *pro tem*. The next business in order is the consideration of the article, No. 17, on railroads and canals. Is it the pleasure of the House to proceed to its consideration? ["Yes." "Yes."] The article is before the Convention for consideration on second reading. When the Convention adjourned yesterday the sixth section was pending. The question is on the adoption of the section as amended, on which the yeas and nays were called for but not ordered.

MR. SHARPE. Mr. President: It is with extreme reluctance that I rise at this late day to consume any portion of the time of the Convention. Were it not for the uncandid and unfair criticism which some gentlemen on this floor have made, not only upon the section under immediate consideration, but upon the whole article, I would gladly have remained silent. But, having had the honor of being a member of the Committee on Railroads, and having participated in its deliberations and concurred in its report, I have felt it to be my duty, and I have felt impelled by a sense of honor, to stand up here for its defence.

The article is not the crude, hasty and ill-digested product of inexperience and ignorance, which some gentlemen have been pleased to stigmatize it. My knowledge of this subject, I confess, is limited. My pathway in life, from my youth up, has been in a different direction, and through a different channel of thought. But upon the Committee on Railroads were gentlemen of large experience and sound judgment about these matters, and the article which has been produced and which some delegates on this floor seem determined to pursue with a hue and cry, has been the result of calm, conscientious and honest deliberation and con-

sideration by the committee during a period extending over several months.

I entreat, therefore, from this Convention a candid consideration and an unbiased judgment. I hope I may be allowed to say, standing upon the threshold of these remarks, that I have no hostility whatever to railroad companies. I candidly admit that they have taken this Commonwealth up in their Briarean arms, and have placed her upon a pinnacle of greatness and grandeur. But, sir, in the early stages of this Convention it was determined that a Committee on Railroads should be created and that committee was appointed with entire unanimity. As there was a committee, it was certainly expected that it should do some work, and present an article on the subject of railroads to this Convention. Both before and after the appointment of that committee, this Convention was flooded with suggestions of delegates which they hoped to see incorporated into the organic law. Out of this raw material the committee has digested and compiled the report which has received such favorable consideration from the committee of the whole. If we turn to the present Constitution of the State we shall discover that it contains no section on railroads. At the time of the framing of that instrument the construction and operation of railroads was an almost unknown and unheard of phenomenon among the people. The whole system was then wearing the swaddling clothes of infancy; but after the lapse of thirty-five years we find great lines of railroad stretching out through mountains and through valleys in all directions. The stately steppings of these mammoth corporations sound throughout the Commonwealth like the tread of giants. We live in different times, surrounded by different circumstances and different influences, from those who framed the Constitution of 1837 and 1838.

Now, sir, was it expected that the Committee on Railroads should enhance or curtail the rights of railroad corporations? Was that committee to increase or diminish their prerogatives? Was it to plant more firmly the heels of monopoly upon the necks of a prostrate people, or was it to lift them off? Was it to attempt to bind this modern Sampson with the green withes of sympathy or the new ropes of delicate consideration, or was it to seize firm hold of him and shear him of his unhallowed locks, wherein his strength abides? The Convention was

not alone responsible for the appointment of the Committee on Railroads; but as the cry of the children of Israel came up from the land of Egypt to the ears of the great I Am, so the cry of an oppressed people against corporate oppression and corporate despotism came up and filled the ears of this Convention, demanding relief.

What says the voice of the people? It arraigns these corporations and charges that they were originally chartered to build highways for the commerce of the State; that their roads were to be open and free and common to the business wants of all the people, at reasonable prices and under reasonable regulations; that they were to be common carriers of passengers and freights and that alone; that they were to afford the people the fullest facilities to carry the products of their industry to the best market; that they were to serve and protect all alike, and to hinder and oppress none; that in consideration of these advantages to the people, they consented that the right of eminent domain and the high prerogatives of the Commonwealth might be lodged in these corporate bodies; that they authorized them to construct their roads where they pleased, and to take any man's property they chose, with the single restriction that he should be compensated for his property; that an examination of the original charters of these companies will show that the sole purpose and object of their creation was intended to be the transportation of tonnage and passengers.

But that same voice of the people complains now, that by various supplements these companies have entirely departed from the original object of their creation; that they have become the largest landed proprietors in the Commonwealth; that they have possessed themselves of the richest coal fields in the world; that they have almost usurped the monopoly of this greatest necessary of life; that they have become miners and manufacturers; that instead of being the common carriers of the products of other people, they are largely engaged in carrying the products of their own mines and manufactories; that they crush out whom they please and elevate whom they will; that they have assumed a deadly hostility to private capital and private enterprise. Aye! The people charge home upon these corporations that they have stolen from them—I use the term advisedly—

have stolen from them, those august privileges and regal powers, by the connivance and with the consent of a bribed and a corrupted Legislature; that the railroad companies from being the servants of the people have become their masters, and that the Legislature instead of being the law-making power of the people, simply registers and promulgates edicts of these imperial corporations. The whole scope of this article on railroads is to lead back these wandering companies to their original and legitimate functions. Especially is that the purpose and the object of the section immediately under consideration. What does it propose? It proposes two things: First, that “no incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining on manufacturing articles for other persons or corporations for transportation over the works of said company;” and second, “nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business;” with this saving clause: “but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.” This is “the whole head and front of the offending” of this section, that has caused such consternation, and excited such indignation amongst the friends and advocates of railroad monopoly. Why, sir, what good logical reason can be given why a company chartered as a common carrier should not remain such? What good reason can be given why a company chartered for transportation should become a mining and a manufacturing company, to the detriment of individual enterprise and individual capital? Did time permit, I could give many instances of the enormities practised on individuals by these companies, under the protection of the stolen immunities and privileges.

What is the argument against the section? It has a two-fold aspect. First, that the companies already organized and in existence have got all they need and all they want and that this section cannot and does not reach them. And secondly, that the section, if adopted, will prevent competition among companies

hereafter created, and thus greatly increase the power and monopoly of the present companies, and thus aggravate the grievances from which the people are now suffering. But the argument misconceives the scope of the section, and is therefore fallacious. The language of the section is general. It applies to all the corporations now in existence, and to all who are to come into being hereafter.

It declares that no company incorporated as a common carrier shall engage in mining or manufacturing. These companies that have been given possession of these vast domains of the people's territories; that now hold in their covetous grasp the coal basins of the Commonwealth; that can raise the price of the poor man's coal to any figure they please; if they are prohibited from mining and manufacturing they must let go their hold upon this property. They cannot have any further use for it if they cannot mine or manufacture, and they would have to break up these large estates and sell them to private individuals and private companies and private partnerships, and thus these vast monopolies would cease. This is the purpose and scope of the section. I scorn to disguise its meaning.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. BIGLER. I have not spoken on this section, and therefore will take the privilege of making a few remarks. I, for one, am anxious only to do that which will best protect the public in all these questions relating to railroads, and surely I never would agree to incorporate any railroad companies without the denial which is made in the latter part of this section.

No railroad should be allowed to acquire real estate beyond that which is absolutely necessary for the construction and successful or practical working of the road. I presume there are very few, if any, delegates who would be willing to take the converse of this position and say that in incorporating a railroad company in the future they should have real estate beyond that which is absolutely necessary. This is an old and a favorite doctrine of mine, and so far as it appears in this section I endorse it thoroughly; but, sir, I am not prepared to say, I am not lawyer enough to inquire into the question of how far it would affect companies who have heretofore acquired it. But as it stands as to future companies it is right, and for that part of the section I am willing to vote.

I voted in favor of the amendment that struck out the interdiction against the managers and officers for the reason that I could not see why a man along the line of a railroad engaged in mining and manufacturing should be excluded from taking a part in the management of a railroad. Now, sir, I do not see that in mining and manufacturing along the line of the road by those interested in it articles as may be transported on the road can do any public harm. I do not think this clause is in a proper form or place, but I do agree that no railroad company should be allowed to become a mining and a manufacturing company; that they ought to be confined to the legitimate business of common carriers.

While this section in its form is not what I would be glad to have it, I do not hesitate to say that those things which are denied to railroad companies on its face ought to be denied; they ought not to be miners and manufacturers; they ought not to have more real estate than is necessary for the legitimate purposes of a railroad company. That is all I have to say.

Mr. J. W. F. WHITE. I agree, Mr. President, with the remarks of the delegate from Clearfield on this point, that a railroad company which is incorporated as a common carrier should not engage in any other business, nor engage in mining and manufacturing; but it has occurred to me there is far more in this section than that, and I call the attention of the chairman of the Committee on Railroads and of the members of the Convention to this fact: Suppose a company shall be incorporated mainly to reach the mining regions of our State and mainly as a coal company to develop and take to market the coal from different portions of our State; its main business is not that of a common carrier; will not this section now prohibit that company from carrying passengers or accommodating people at all? It says that no incorporated company doing the business of a common carrier shall do so and so. Carrying the few passengers that might be on the line of their railroad or accommodating the people living along the line of that railroad of a very limited character would make them common carriers; and under this section they would be prohibited from carrying the coal of that region to market.

It strikes me that this section will cover a case of that kind, and if so I think

it would be very injudicious to place it in the Constitution. There are many mining regions of our State where there are coal and iron, and the common carrier business would not authorize the construction of a railroad merely for public business; it would be mainly for the carrying of the products of those mines belonging to the company to market; and I ask the question, would not this section prohibit such a company from accommodating the few people along the line of that railroad?

Mr. COCHRAN. If the gentleman will permit me to reply I will simply say that I do not understand it in that way. The gentleman from Allegheny is certainly a very able lawyer and is as able to construe this section as I am, but I think, taking the section together, it does not have that effect.

Mr. J. W. F. WHITE. It occurred to me, Mr. President, that the moment they become common carriers they will have to cease carrying the products of their mines to market, under this section. They must cease under this section if they are common carriers at all.

And, Mr. President, if it does not cover a case of that kind, then the section will be of no use, because it can be got around by incorporating the company for any other purposes. I call the attention of the Convention to the sixth section of the article on private corporations, and it seems to me that that section covers all we need. The sixth section of the article on private corporations, which has already passed second reading, is in these words:

"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, does not that language cover all that is really valuable in the section before us; and is it not more proper in the article on private corporations than here, because there it is applicable to railroads and all other corporations? It seems to me that there is no use in burdening down our Constitution by repeating sections and provisions in different parts of it; and as that section has already passed second reading, embracing what may be considered the material portions of the section now before us, it seems to me useless to pass this.

Now, one word as to the closing sentence of this section. I call the attention of the

Convention to the limitation here as to the power of mining and manufacturing companies:

"But any mining or manufacturing company may carry the products of its mines or manufactories on its railroad or canal, not exceeding fifty miles in length."

Why should we limit mining or manufacturing companies to fifty miles on a railroad? If they have a right to construct a railroad fifty miles to carry the products of their mines and manufactories to market, why should they not have the right of going fifty-five miles or sixty miles? What principle is there that will limit these mining and manufacturing companies carrying the products of their own mines and manufactories over their own roads only fifty miles? I cannot conceive of it; it does seem to me a most pernicious section of the Constitution. Why not say that they may carry their products over their own railroads a hundred miles? If they have a right to construct fifty miles, why not give them the right to construct longer than that to reach other regions of our State and develop other portions of it? Why say they shall carry fifty miles and no further? It does seem to me that that restriction is wrong, and if the section is to be adopted the latter part of it, that limits them to fifty miles, ought to be stricken out.

Mr. BIDDLE. Mr. President: I intend to vote for this section, maimed and mutilated as it is by being deprived of the words that were struck out by the amendment adopted yesterday. I intend to vote for it because I cannot get anything better. I regret very much that there seems to be a disposition on the part of the House to strike out nearly all the provisions of this article which I deem valuable.

The blows come directly from two classes of attacks. The one class, at the head of which I place my distinguished friend, the delegate from Philadelphia who sits in front of me, (Mr. Cuyler,) sees nothing in all the legislation of this State for the last twenty years in regard to these corporations but what is admirable. In his apprehension everything that has been done has been rightly done, and every effort that has been made on this floor to check or qualify the partial and one-sided legislation, about which we have been entertained in almost every debate upon every article of this Consti-

tution, has been wrong. He sees everything through the rosy mists of his prepossessions; and whether we are called upon to place these corporations, in regard to limitations of time or limitations of amount, or in any other respect, on the same footing as individuals, he thinks it all wrong. Indeed, if I understand him aright, he seems to think it an evidence of the highest prosperity of one of these great institutions, that they are already provided with the means of running limitably into debt; and, while on the one hand he indulges in remarks about investments of surplus capital, which I did not quite understand, on the other, he thinks that the power of borrowing millions and hundreds of millions is a most desirable thing.

MR. CUYLER. Will the gentleman pardon an interruption?

MR. BIDDLE. As our time is justly limited to ten minutes, and I do not intend to transgress a second over my time, I would rather keep it all to myself.

There is another class of objectors, who object to almost everything that is presented in this article, because it is said that so much mischief has been already done it is in vain to attempt to stem the current. It is extremely difficult, therefore, to meet both classes of objectors, but still something may be said in defence of this section and of the article generally. I, for one, believe it to be most valuable, and shall continue to believe that the management of these companies should be by persons who have no partial or indirect interests to foster which weaken their allegiance to the body of proprietaries, whose servants they are, and to the public generally, and therefore I voted against the amendment of yesterday. I am one of those who believe it most valuable to keep these transportation companies in the direct line of their duty. I do not care how swimmingly we may appear to go on just now, when gales are prosperous and skies are clear. I believe the day of reckoning is to come when every departure from the proper principles of the management of these roads will be visited with woes unutterable upon those who have embarked their capital in these adventures, and necessarily upon the public at large. I shall, therefore, go for every measure of restriction that is possible. If it is only to enounce a principle and nothing more, still I shall vote for that.

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I feel the force of what was so well said by the gentleman from Allegheny (Mr. T. H. B. Patterson) yesterday when he pointedly called the attention of the House to the twelfth section of the article, by which you provide, reaching, retrospectively if you please, companies already chartered, that no future legislative favors shall be bestowed upon them unless they conform themselves to the law of this article; and I believe, notwithstanding what has been said on the other side, that an enormous amount of good will still be done by passing the different sections of this article, in spite of the vast grants of power that have been already made. Every attempt to put them on the same footing of equality with the rest of the public seems to be met in this way. When it was a question of extending to the rest of the community the same right of borrowing money at the same rates of interest as is conferred by special privileges upon these corporations, what was the argument? "Oh, it is legislation." Now, I call such a provision as that a direct blow in the face; and yet I found the distinguished member from Columbia, (Mr. Buckalew,) who expressed his readiness to deal such a blow at the proper time, voting against that most wholesome provision. Perhaps the blow was too direct.

I found in the substitute offered for the fifth section yesterday a most wholesome provision, taking from the grasp of these larger corporations the smaller lines which were devised and constructed for peculiar local purposes. I thought that a very direct blow; and yet this Convention in its wisdom turned it aside from these corporations; so that it seems to me, whether the law be direct and open or whether it be a little more indirect in its operation, the same arguments are addressed to prevent its operation upon these bodies.

Now, I have no purpose at all to subserve except what I believe to be the interests of the whole community. I have no private griefs to redress; I have no peculiar interests to advance. I suppose I may say at least that much. Most of the addresses upon this subject have been prefaced by statements of what the speakers are or were in regard to this subject. These declarations are generally of very small value; they are either the effusions of sincere and pardonable vanity, or they are something else. Sometimes they are meant as a cover for apparent inconsistency, and they amount to about this:

"Heretofore my position has been thus and so; I have been a very consistent opponent of the particular style of legislation which is thought to be so injudicious; but now I find the current so strong that I cannot swim against it any longer, and, therefore, I will take a new departure." I do not attach a great deal of value to such declarations. They are generally entirely apart from the point under discussion. The individual *status* of the speaker has really very little to do with the question. What is all important is, "can you do and are you doing anything to check that which, by one universal cry from the whole community, is believed to be wrong." Why, sir, it was just to prevent sins of this kind that this Convention thought it necessary to adopt a peculiar style of oath, and that extraordinary provision which enables a jury to review the legislation of the Legislature—it was just this kind of legislation that was intended to be struck at by those provisions.

Now, I say most respectfully to this House—but still I say it as emphatically as I can—what a farce to pass such provisions as those if, when you have the opportunity of directly meeting the evil, you omit to do it, and then hug yourselves in the delusion that by these extraordinary retroactive provisions you are going to do any good!

The PRESIDENT *pro tem.* The gentleman's time has expired.

MR. BULLITT. Mr. President: I have an amendment to offer. I move to strike out all after the words "section six," and substitute the following:

"Presidents, directors, officers, agents and other employees of railroad and canal companies shall not engage or be interested, directly or indirectly, otherwise than as stockholders in such companies, in the transportation of freight or passengers as common carriers over the works of any company of which they are presidents, directors, officers, agents or employees, and they shall not so engage or be interested in the transportation of freight or passengers over the works of any other such company, except as stockholders therein, which may be leased or the majority of the capital stock of which may be owned or controlled by the company of which they are presidents, directors, officers, agents or employees."

It appears to me, Mr. President, that this subject of railroads is a very deli-

cate one for this Convention to deal with. The value of railroads to the commerce of this country is a conceded fact, I suppose, on all hands. The State of Pennsylvania to-day is reaping the largest benefits from the system of railroads which has penetrated through almost every part of her territory. They are the great arteries of commerce in times of peace; they build up and contribute more to the growth of your State, to your wealth, to your population, to your power, than probably any other one element; and the moment you undertake to trammel or restrain or constrain them, you incur the hazard, possibly, of impairing their usefulness and rendering them inefficient for the purposes which were originally intended to be accomplished by them. At the same time, Mr. President, it is important that they should be put within such restraints and within such bounds as may keep them within proper control and prevent them from acquiring power which will enable them to overcome the powers and the authorities of the State itself.

The section under consideration appears to me to be objectionable in that it puts a trammel upon railroads which may in time prove to be injurious and detrimental, instead of beneficial. There is, however, an object which it seems to me ought to be accomplished, and that I have endeavored to reach in the section which I propose as an amendment; that is, to prevent the officers, agents or employees of railroad companies from converting the railroads themselves into the means of conducting to their own private wealth at the expense of the stockholders and to the injury of the public. It is an injury to the stockholders inasmuch as any intermediate line which is controlled and managed in the interest and for the benefit of the officers or employees of the railroad companies themselves must obtain more favorable terms from the railroad companies than they could do if this matter were left in the hands of persons not interested in the railroad.

Another effect of the interest of parties controlling railroads in these intermediate lines is to induce them to make contracts with the railroad companies at higher prices and thus injure the public. To-day the freights upon all the large railroad companies are higher than they need be in consequence of these intermediate lines. That is known to be the fact, and is felt to be an evil in all the large commercial communities.

If you put the power into the hands of the men who control the railroad companies themselves to make contracts and bargains for themselves, no man can resist the temptation, I care not who he be. The conscience can always be salved over with excuses to enable a man to reach such a point as that, and necessarily he will make contracts, as I said, injurious to the stockholders and injurious to the public. Besides that, the effect of this is necessarily injurious to the official morality of the men who are in the management of these railroad corporations. This evil of intermediate lines, controlled by the officers of the railroad companies in the interest of and for the profit of the officers and employees of those companies, has extended throughout this State, and I do not think anybody will contradict me successfully when I say that it is at least generally believed that such a system prevails to a very great extent, not only in Pennsylvania but throughout the whole of this country. One of the ablest reports ever made to the Legislature of any State, and which caused a deep interest throughout the State of Ohio at the time, was a report made some four or five years ago by a committee of the Legislature of that State upon this very subject, in which that committee showed that this system ramified throughout every county in the State of Ohio, and was corrupting and injuring the trade of the State, the business of the State, and the railroad interests of the State in every direction.

While I am not willing to vote for this section as it now stands, I think that the substitute which I have offered reaches a point which seems to me to be intended to be reached by this section, but which has been stricken out. I propose now this as a substitute for the section, as reaching an evil which I think ought to be corrected by this Convention.

MR. CARTER. I desire to occupy but a few minutes time, not with the slightest hope of effecting any change in the mind of any individual present, but to define my position in regard to this matter and to give expression to some general thoughts which have been suggested by the debate of the last session. It seems that we are in danger of losing sight of the true question or principle at issue, in the many eulogiums paid to the railroad systems of this State and of other States with reference to the vast good that they have conferred upon those Commonwealths.

No one doubts it; no one calls in question the fact that they are indispensable to human progress. Sir, I would regard that man as insane who would wish to trammel or cripple injudiciously or injuriously this great and important interest. But is it not the teaching of history that there is a liability to abuse this, and that abuse has arisen in these great monopolies? It seems to be the intention of the report of the Committee on Railroads and Canals to correct that abuse.

There seems to be a disposition, however, to forget that there is a danger in great monopolies. What is to become of the teachings of the great exemplar of Democracy, Andrew Jackson, who raised his voice in opposition to monopolies and warned the people, in his day and time, of the danger and the evil that would flow from them? Does not that danger exist at present? Nay, are we not in the very midst of it? If his warning voice is still extended, if he is yet revered, not only merely by his political friends and partisans, but by the whole people, it is for the resolute and determined stand he made against a monopoly which only controlled some \$30,000,000 of capital, that we hold was wise and judicious; and, sir, is there no danger now to the liberties of the people from this great railroad interest that has ten times the power and ten times the amount of capital, and whose Briarean arms extend to the remotest parts of this Commonwealth, and would fain embrace this Convention, that has been controlling the Legislature of the State in a way that the United States bank against which he warred never attempted, or if it did attempt, failed of success?

Is it denied that the Pennsylvania railroad company has interfered with the legislation of the State? If it has done so, is not this then a time for men to pause and think before we heedlessly vote down all the provisions of this article, which have been designed to correct this evil? I think that the danger is imminent. It is not denied. I have the highest authority, that of the gentleman behind me, (Mr. Cuyler,) for saying that that institution *has interfered* with the legislation of the State.

MR. CUYLER. I ask the gentleman to whom he refers.

MR. CARTER. I refer to the gentleman who interrogates me.

MR. CUYLER. I deny it.

MR. CARTER. Well, sir, I repeat it.

Mr. CUYLER. The gentleman says that I said that to him.

Mr. CARTER. I did not say that you said it to me.

Mr. CUYLER. Well, I deny that I ever said it to him or anybody else.

Mr. CARTER. The gentleman did say it, and I repeat the remark. I care not what the minutes or published reports of this Convention say; I trust my own ears; and I will tell the gentleman when he said it. He said it in a colloquy upon this floor between himself and the distinguished gentleman from York who stands before me, the delegate-at-large, (Mr. J. S. Black,) in which he denied, when the question was closely put, the existence of interference with the legislation of the State of Pennsylvania, by the Pennsylvania railroad company, but *he admitted* that when the Pennsylvania railroad company had *interfered* it was to prevent hostile legislation.

Have I not made out my case? I insist upon it that if they interfered to prevent hostile legislation they can interfere and would interfere and have interfered to induce favorable legislation. Now, sir, have I not established my allegation? That he had admitted interference.

We have heard much of the corruption of this controlling influence on legislation. It has been said that our country is going head-long to destruction from the corruption of our legislative bodies. Now, gentlemen of the Convention, pause and ask yourselves what has been the cause of that corruption? I say again that these vast monopolies are the corrupting power; it is they who are responsible; and never, by act or deed will I aid to increase this power. It is unsafe for the liberties of the people.

In replying to these views as expressed by others we have had a siren song sung of the great prosperity of the State as brought about by these institutions. They ever sing this same song in our ears. The gentleman from Lycoming presents a beautiful picture worthy of Claud Lorrain of the great prosperity of the vast prairies of the west, induced, fostered and created by railroads. But, sir, there was a background to the picture which he did not fill up. That background is the frowning brows and the angry eyes of a half a million of men who believe that this has not been an unmixed good, an unmixed blessing. I refer to those organizations now existing by thousands, not thousands of men, but thousands of

granges. I would ward off that thing if I could. So long as the people of this State rest in the belief that this evil is growing no worse, and that this great Commonwealth, as the gentleman from York (Mr. J. S. Black) said, is possessed of strength enough to bear off the burden of evil and this corruption as did Samson the gates of Gaza, I am not willing to remain silent in view of the perils of the future. There is a limit to the power of the State of Pennsylvania to stand this oppression, to endure these evils, and now is the time and hour to do it. I am not aggrarian in feeling—far from it; but for the sake, not only of the people, but of the railroads themselves, let us put in the Constitution such restrictions as the exigencies of the occasion require.

One word as to the speech of the gentleman from Columbia (Mr. Buckalew.) I have been accustomed all my life to put things on principle. I believe that a corrupt tree cannot bear good fruit. It must bear corrupt fruit. He says that for years he contended with this railroad influence and did not believe that common carriers should be engaged in any other business than that for which they received their charters and that they should not engage in mining or manufacturing. He fought it for years, he said, but yet at last it was consummated. Now what does he propose? Why, to give up the fight. Would not the gentleman then at that time have liked to have such a constitutional inhibition as this to have supported him? It would have come in place then and there, but now he yields the fight. Some Delilah has shorn the locks of our Samson; he has lost his strength and power; he has yielded the fight. Not so with me. Sir, I believe if a thing is wrong in principle it is wrong always. If it was wrong ten years ago it is wrong now. If it would produce wrong results ten years ago it will produce wrong results ten years to come. And I would yet interpose this section, this prohibition that they should be confined to the business of common carriers.

I have been accustomed to listen to the words of wisdom from that gentleman, and I have almost felt as if sitting at the feet of Gamaliel, with his long acquaintance with public affairs and calm deliberate manner; but I must acknowledge that I was utterly disappointed when he came to that most lame and impotent conclusion which was that now, inasmuch as this wrong, as he held it to be, had

been perpetrated, now we must acquiesce. Oh most lame and impotent conclusion! Why, sir, if a thing is wrong and on a wrong principle, why fight on, and fight ever, to correct it. I know no other rule than that.

But I know that this Convention is tired of this subject, and I have had the desired opportunity to express my opinions and certainly honest convictions. I do not want gentlemen to lose sight of the fact that there is danger of yielding up to vast monopolies and conferring to great power. Many young men are in this Convention, and I will take the liberty of saying this to them, to be somewhat careful of making their record against these judicious restrictions that the people of the State expect us to apply. The grangers will be on after awhile, there is no doubt of it. I disapprove of it, I oppose those things, and I would do everything we can do to avoid the supposed necessity of such organizations in our grand old Commonwealth.

Mr. T. H. B. PATTERSON. I wish to call the attention of the delegate from Philadelphia (Mr. Bullitt) who offers this substitute, to the fact that after the striking out of the words, "nor the officers or managers thereof," by the amendment yesterday, his substitute does not seem to be strictly germane to this section, and therefore I appeal to him to withdraw his substitute and offer it as a separate section in order to get a fair and square vote both on the section and on the substitute.

Mr. BULLITT. I withdraw the motion to strike out and also withdraw this amendment, and I will offer it as a separate section immediately after this section is voted on.

The PRESIDENT *pro tem*. The amendment is withdrawn. The question is on the section.

Mr. BUCKALEW. I rise to move an amendment: To strike out all after the word "business," in the eighth line. The words to be stricken out are:

"But any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal, not exceeding fifty miles in length."

The more I examine this section, the more defective it appears to me to be. The first part of the section and the latter part are quite inconsistent and mutually destructive. The first part of the section forbids any carrying company from en-

gaging in mining or manufacturing. The concluding part of the section allows any mining or manufacturing association to become a common carrier, to engage in the business of transportation, to manage and conduct railroads, save only that the lines shall not exceed fifty miles in length.

Now, sir, there are but few points in the State from which fifty miles will not carry you out of the State or to a connection with other railroads of the United States. All that a railroad company that desires to mine coal, to engage in the business of transportation, will have to do will be to organize a mining company of its own members or of a clique of its members, and then they will have completely, of course, the privilege of using the line of road if it is already constructed, or if not constructed, to themselves build a line of railroad fifty miles long, and thus as a common carrier become at the same time a producer either of mining or manufactured articles to be transported over the road.

So this section has absurdity stamped upon it. The first part of it and the last part of it neutralize each other, and nothing remains of it except a limitation that mining and manufacturing companies or associations cannot transport their products over the road beyond fifty miles.

Mr. President, the main question involved in this section is covered already by the sixth section of the article on corporations in rather better language. That section, which has been read two or three times, provides that no company shall engage in any other business than that provided for in its charter; and then in the article on legislation we have provided that the Legislature shall pass no special charter for any sort of incorporated companies to carry on business pursuits.

Now, sir, I know nothing that you can add to the section already agreed to in the article on corporations, unless it be a provision that the Legislature shall not authorize corporations to be created to carry on more than one business or one employment at the same time. I do not see what else you can do except add a provision of that sort. Of course, here are two or three clauses of this section which, standing by themselves, I should be willing to vote for, but the section is inconsistent with itself, destructive as I have already explained, and then the

only language in it that is of any consequence is already in better form in the article on corporations, to wit: The limitation of a corporation strictly to its corporate business. That, of course, would be a conclusion of law; undoubtedly that is an ancient principle of the common law, but I have no objection to having it inserted in the Constitution, but it is already there in our other work.

Mr. J. S. BLACK. Where?

Mr. BUCKALEW. In the article on corporations, section six. Mr. President, there is another limitation contained in one section of this article which we have already voted down; that is in section five:

"No railroad, canal or other corporation doing business as a common carrier shall, either directly or indirectly, hold, guarantee, or endorse shares in the capital stock, bonds or other indebtedness of any other corporation, individuals, or partnership, except those doing the business of common carriers."

That we voted down. It was done against my opinion and against my vote; but that would have meant something. Why, sir, here in debate it was explained on a former occasion that a railroad company can become concerned indirectly in the business of manufacturing iron—

Mr. J. S. BLACK. The gentleman referred me to the sixth section of the article on corporations. In what part of the sixth section on corporations does the gentleman find any provision which will prevent the Legislature from making the charter of a corporation as broad as it pleases and allowing any number of businesses to be done by one company?

Mr. BUCKALEW. I did not say that. I said that was the only thing that could be added that I could think of.

Mr. J. S. BLACK. If it be not in that article, why should we not insert it in the article now under consideration?

Mr. BUCKALEW. If the gentleman will prepare a clause of the sort, I will look at it with very respectful attention.

That fifth section, which has been voted down, I think might be useful in preventing corporations from being indirectly concerned in the business of other corporations by guaranteeing their stock and bonds. I was willing to vote for it and I have no objection to voting, for some careful and proper provision which shall limit the Legislature in the matter of passing omnibus charters, if I may use that expression; that is, charters enabling the

corporators to carry on several business pursuits; but as to this section, for the reasons I have just given, in addition to those mentioned by me yesterday, I think the whole of it should be voted down.

Mr. HOWARD. There is still a little left in this section that I think is very much better than section six of the article on corporations. The delegate from Columbia seems to think that section six of the article on corporations will supply all that is left in this section and in a better manner, therefore the Convention should vote this down. Now, section six of the article on corporations does not supply it. Section six of the article on corporations declares that corporations shall be kept within the limits of their charters; that is, they shall be confined to the business specified in the charter of incorporation. I can refer the delegate from Columbia to charters of incorporation to-day that embrace railroading, the business of common carriers, the business of mining, the business of manufacturing, the business of banking, the business of building passenger railways, of doing everything under the sun but running the government of the United States and the government of Pennsylvania; and yet under the sixth section of the article on corporations they can do all these things, provided they are specified in their charters!

So the Convention will understand distinctly if they vote down this section on the idea that it is better supplied by section six of the article on corporations, they certainly will be mistaken. This section six in the railroad article provides that they shall be limited to the business of common carriers; that is, it brings them right down to the specific business for which they were chartered. We have got that much left of the sixth section of this article, while the sixth section of the article on corporations permits them to do anything that is specified in their charter; and I repeat here again that a company called the Pennsylvania company, a right arm of the Pennsylvania railroad, has more power than ever was conferred upon any corporation before in the world. It has the right to do anything that it is possible for the Pennsylvania Legislature to give it, manufacturing and mining, not only common carrying, but building passenger railroads, doing everything that can be done by man under the sun, except to run the government; and yet that kind of a cor-

poration would be covered, saved and protected by the sixth section of the article on corporations that the delegate from Columbia thinks is a great deal better than what is left of the sixth section of the article on railroads.

Then again he seems to think that the section is inconsistent with itself, and that the latter two lines and a-half should be stricken out, because that clause allows mining companies having a road not exceeding fifty miles in length to carry the products of their own mines and manufactories, and he says that will turn these companies into common carrying companies when it was not intended by their charters that they should be anything more than mining or manufacturing companies. Now, what does the section say? It does not say anything of that kind. The language is: "but any mining or manufacturing company may carry the products of its mines and manufactories." They are permitted to carry the productions of their own mines and their own manufactories. They cannot become common carriers unless they carry for others. This section does not permit them to do that, and therefore they cannot be turned by this section, if adopted in the Constitution, into common carrier companies when they were not intended to be such by the Legislature. There is, therefore, nothing in that argument of the delegate from Columbia.

If the members of this Convention mean that hereafter when a company is chartered as a common carrier company, it may do everything else that is embraced in such a charter as that obtained by the Pennsylvania company, then they will strike down this section and say they are satisfied with section six of the article on corporations; but if they do not mean to have such broad charters as that hereafter, if they mean that when a charter is granted to a company to do the carrying trade of the State, it shall be limited to that business, then they will vote for the balance of this section six.

Why, sir, these latter lines were inserted in order to meet the objections that would be raised to the section by those who are opposed to all reform. I find it is utterly impossible in this Convention, and it has always been so, not only here, but everywhere, to please everybody. You never can please those who are opposed to all reform whatever. Of course there will always be objection. Objection

and fault can be found to the best plan that ever was proposed.

I think the amendment proposed by the delegate from the city (Mr. Bullitt,) and subsequently withdrawn, is fully covered by the eighth section of this article, which prohibits the officers of these companies from engaging in the business of transportation on the lines of their roads.

Mr. President, I admit that the life, the real value of it, has been taken out of this section, but still there is something left that ought to be asserted as a principle by this Convention, namely, that when a company is chartered as a common carrier they should be limited to that business and the Legislature should not have the power to confer upon them any other powers or privileges.

Mr. BAER. As a member of the Committee on Railroads I wish to say a word on this article. I believe I am responsible for the latter clause of the section as it stood before it was modified, but not exactly as it appears at the end of the section now. I urged it then for the reason that the first clause as it stands in the proposition, to my mind was a perpetual barrier to all the development of the interior by small railroads. While I was willing that large companies that were incorporated for the sole purpose of common carriers should be restricted to their legitimate business, yet I thought, in order to protect companies that were incorporated as mining companies and who became common carriers only as a necessity, because they were carrying their own products and carrying for others as a mere incident, that this other clause became necessary, and I think so still. I think now that if the first part of this section is adopted, the latter part becomes a necessity unless we intend to cripple all the small enterprises in the State. I hope, therefore, that if one is adopted the other will be. I admit that there is a clause in this section that is wholly, and perhaps better, covered by the sixth section of the article on corporations. But, sir, as I understand the question now pending, the gentleman from York proposed a division of the section, the first division to end with the word "company" in the fourth line. If so—

Mr. COCHRAN. I wish to say to the gentleman from Somerset that that division was not called for by me.

Mr. BAER. Does not that call still stand, and will not the vote have to be

taken in that form? If that is so, then I ask is not the amendment offered by the gentleman from Columbia entirely out of order? It becomes necessary, therefore, to consider the section as it stands upon that division. The first clause reads: "No incorporated company doing the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over the works of said company." That clause, I think, should be amended so as to cover the objections that are raised here. For that reason, if it is in order, I move to amend the first division, by striking out all after the word "section" and inserting as follows:

THE PRESIDENT pro tem. There is an amendment now pending, to strike out all after the word "business," in the eighth line.

MR. BAER. But I raise the point of order on that amendment that a division has been called on the section, and the first question is on the first part of the section, and the amendment of the gentleman from Columbia must be out of order as it applies to a subsequent part of the section.

THE PRESIDENT pro tem. The delegate is laboring under a misapprehension. A division was asked for yesterday, but the Chair stated that the last clause would be senseless under such a division, and therefore ruled the division out of order.

MR. BAER. Then I shall withhold my amendment until the pending amendment is disposed of. I will read it at this time so that gentlemen may understand the amendment that I propose to offer at the proper time:

"No company organized to do the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over the works of said company."

The difference between the two propositions is simply this: That while the section as it stands interferes with the small companies whose special and legitimate business is mining, and who only become carriers from necessity, without interfering by any possibility with any interest in any locality, this amendment will confine it to corporations that are incorporated for the purpose, and whose main business is that of common carriers, and that is as far as we ought to go.

THE PRESIDENT pro tem. The question is on the amendment of the delegate from Columbia.

MR. BUCKALEW. On reflection I am willing to allow the vote to be taken on the section, and I will withdraw the amendment.

MR. BAER. If that amendment is withdrawn I move to amend the section, by striking out all after the word "section," and inserting the following:

"No company authorized to do the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over the works of said company."

MR. ARMSTRONG. It seems to me, Mr. President, that the debate on this question has not been characterized by the candor which has ordinarily heretofore attached to the debates of this Convention. It is not true, I think, that gentlemen who oppose this section oppose it because they are particularly railroad men, or because they believe that all legislation heretofore passed on the subject is without exception, or because they think that the evils have grown so large that they are beyond all remedy. It is, as I believe, far more based upon a well founded apprehension that it would be needlessly embarrassing without accomplishing any corresponding good.

For myself, I readily admit that railroad corporations have exercised at times an injurious influence over the legislation of the State. I could point to instances in which I believe the influence has been corrupt; but I do not believe that the people of this State are hostile to railroads. What does it all mean, and what is the summation of all the popular feeling manifested upon this subject? If I correctly understand it it is, first, that railroad corporations have exercised undue and sometimes corrupt influence in legislation; next, that they have exercised an unwise and unfair discrimination in freights. Beyond those two particular items of complaint, so far as my knowledge goes, the people of the State are not dissatisfied with railroads, nor, except in a few instances, with railroad management.

Now, what have we done by way of improvement in that direction? As to legislation, we have limited it in the most precise terms. We have said that the Legislature "shall not pass any local or special law to regulate labor, trade,

mining or manufacturing, nor create incorporations by amending or renewing the charters thereof, nor granting to any corporation, association or individuals, any special privilege or immunity; nor shall the Legislature indirectly create such special or local law by the repeal of a former law; nor shall any bill be passed granting powers in any case where the granting of such powers can be covered by general law."

In addition to this we have limited, I trust effectually, the power of corporations or any other parties to procure legislation through corrupt means by requiring that every bill shall be printed, that it shall be referred to a committee, that it shall be passed upon three separate readings, and the yeas and nays called and entered upon the record. We have also provided what I believe to be a crowning protection, namely, taking from fraudulent legislation the protection heretofore accorded to it by putting it in the power of the courts to inquire into the fraudulent passage of a law and to declare it to be null and void. Now, in the face of these provisions, have we not sufficiently guarded against the corrupt influence of corporations? Have we not greatly limited, if we have not effectually stricken down, the power which they can bring to bear injuriously and unfairly to secure improper legislation?

Now, what have we done as to corporations? We have already provided, in the sixth section of the article on corporations, that 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. That is private corporations.

Mr. ARMSTRONG. Yes; and a railroad is a private corporation. In the ninth section we provide that "the Legislature shall have power to alter, revoke or annul any charter of incorporation now existing and revokable at the adoption of this Constitution or any hereafter to be conferred." So that by this Constitution we have taken into the hands of the State complete control over this entire subject, to prevent, first, improper legislation, and in the next place, to deprive them of its benefit, if it be corrupt, and lastly, to deprive a corporation of all its powers if it abuses its franchises.

But this section is faulty and inefficient in another sense. I took occasion, yesterday, to point out how hundreds of thousands of acres of lands, now lying undeveloped in this State, are waiting for the power which this section would take away to lead on to their development, and without which the land must lie continuously undeveloped and useless, for there is no local trade or local influence, apart from mining or manufacturing, that ever can or ever will develop those lands.

But, apart from this, it is complained that these corporations are gathering into their hands an undue amount of land and influence, and gentlemen have in their minds the Reading railroad, and yet I venture to say that the Reading railroad, as a corporation to-day, is not in its own name the owner of any considerable body of coal land in Schuylkill county. Whether they own, or however it may be in fact, the lands are in the ostensible ownership of other corporations. What have they done in this direction under their own name? Nothing. Other corporations have been created which doubtless they control, and whose means they furnish which have bought up these lands. But gentlemen will reply that the Reading railroad company is the real owner—so it may be. So they doubtless are to a considerable extent; but will this section prevent that kind of dealing? If it be necessary to create a corporation for such a purpose and the Legislature does create an incorporation for such purpose who can prevent it?

Then, again, we have provided in our article on corporations that "any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with the requirements of law, form themselves into an incorporated company," &c. Now with such facility of corporate organization how futile this section will be! Under the powers which we have already granted it would force these corporations, if so be that they desire to exercise such powers or to hold lands or corporate franchises, simply into the creation of collateral companies, setting aside this constitutional provision by the most facile evasion. It puts a premium upon indirection, evasion and fraud. It leads to corruption in a thousand forms, and as far as the people are concerned is utterly useless and inefficient.

In view of consequences like these, so probable and so easy, I cannot bring my mind to approve a section which seems to me to be so full of needless restraints and which can accomplish so little good. It will trammel the development of the State to a degree which those of us who live in the country and know the necessities for corporate assistance in such developments would regret in the highest degree. Along the head-waters of the West Branch of the Susquehanna river there are thousands upon thousands of acres of land where mineral wealth never can be touched until by the great leading trunk lines of transportation assistance shall be given in development; and yet this section would largely prevent it. Examine this question with somewhat of the minuteness with which it will be investigated when it reaches the courts, if it should do so. It is provided that "no incorporated company doing the business of a common carrier shall directly or indirectly engage in mining"—that strikes at the coal interests—"or manufacturing"—that strikes at the iron interests; and I venture to say now to any gentleman who will look over the railroad interest of this State that he cannot put his hand on any railroad, unless it be the Pennsylvania railroad, in the entire State, which has not been built up with a view to the development of individual and particular interests, either at the terminus or along the line of the railway. The Pennsylvania railroad as a trunk line, connecting the seaboard with the far west, was built as a transporting road. The Reading railroad was built to reach the Schuylkill coal fields; so the Lehigh Valley; so the Delaware, Lackawanna and Western. So I might go over the railroads of the State, and with the map in my hand, I could point out not less than one hundred railroads in this State, large and small, that have been built for the exclusive purpose of developing the individual interests which lay along the line or at the terminus of the roads; some of them built with a view to reach a particular interest have been extended to reach other interests a little beyond until in time they have become trunk lines themselves of far greater extent than fifty miles, the limitation named in the proviso of the section. These roads thus extended and strengthened have branched out in a hundred directions, reaching the collateral private interests which lie along their line. Now, under

this section, no man owning land would venture to take stock in such a company for the purpose of developing it, because the moment the road is built, if they open it to the reception and transportation of whatever promiscuous freight, great or small, may be offered for transportation, they become instantly *ipso facto* a common carrier. A common carrier is one who carries for the public, for all the public, and it does not depend upon whether the thing to be carried be much or little

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The PRESIDENT *pro tem.* The gentleman's time has expired.

I will not encroach upon the rule, but I regret that time forbids to develop the argument. I regard the section as pernicious, and the proviso only mitigates its evils, without commending the section.

Mr. J. S. BLACK. Mr. President: There can not be—I do not believe there is—any difference of opinion in this Convention about the main principle of the subject under consideration. Nobody here, nobody anywhere that I know of, is or has been for a quarter of a century past opposed to railroads. We might as well make opposition to agriculture or commerce, or some branch of the mechanic arts. If it be true that we desire to have such improvements in the country it follows that we are willing they shall be made on reasonable terms by corporations; for in that way alone can we get them. Corporations which are established for that purpose, and which execute the purpose fairly, should be encouraged. It is a great public service to the community for anybody to invest his capital in such business, and the man who does it should be encouraged and within proper limits rewarded for what he does.

But it is equally clear that a corporation entrusted with the performance of a public duty should be strictly confined by law to the one end and object of its creation. When its powers are perverted to the purposes of unlawful gain it becomes dangerous. In all the courts wherever the English language is spoken on this and on the other side of the Atlantic, it has always been regarded as one of the most important of judicial duties to hold corporations and hold them hard within the limits of the authority expressly bestowed on them by the Supreme Legislature.

Assuming (what I am afraid is not quite as true as I wish it to be) that the courts will perform this duty well and faith-

fully, the tendency to accumulate powers which are not necessary or proper in the hands of corporations can not be checked by judicial authority alone so long as there is no restriction on the Legislature in creating and extending them.

Knowing as I think I do the public sentiment on this subject, and feeling certain that it is well warranted by reason, I would be amazed beyond expression if this Convention would separate without making some provision forbidding the Legislature to make these unreasonable grants of power to railroad corporations in the future. Let the original charter of the Pennsylvania railroad company be the model for all future ones. It was cautiously and well drawn. It not only withheld all unnecessary powers, but it expressly forbade the exercise of those not granted. It is a great public misfortune that the act of incorporation was afterward so unreasonably expanded.

But you must couple your restrictions upon the Legislature with a prohibition upon the company to use such powers when they are granted. Charters may be given to one company or one body of adventurers and transferred afterward for a consideration to another. The traffic in that business will be stopped hereafter, but there is a large stock of charters on hand now ready for sale and delivery; like those medical diplomas which used to be made, signed, sealed and ready to insert the name of a learned doctor who would pay the money. These acts of incorporation can be got now in every variety, I am told. They come cheap, I think, but I don't know the market price.

But after all your prohibitions you cannot expect obedience to your laws, unless you affix some penalty to their violation.

You must make it the interest of the corporations to keep within the bound you set for them; otherwise they will overleap them without the slightest hesitation. I therefore propose an amendment to this section what I think will be effectual. I desire to add to the section:

"All property acquired by any company or held by another party for the use of any company contrary to this article shall be forfeited to the State, and the stockholders of the offending company shall be individually liable for its debts."

The PRESIDENT *pro tem.* That is an amendment to the section. There is already an amendment to the section pending.

Mr. J. S. BLACK. Well, I mean that as an amendment to come in anywhere; wherever you can find a place to put it. [Laughter.]

Mr. COCHRAN. I am opposed to the amendment of the gentleman from Somerset (Mr. Baer) in the shape in which it is presented as a substitute for this section, because I do not think it covers the ground of the section. I think that there is very valuable matter in the section which ought to be included and which would be excluded should his amendment be adopted. In addition to that, I think that the limitation of companies specially organized would be a very questionable limitation and would be liable to very great abuse; and if that amendment is to supercede the section, which I hope will not be the case, I do not wish it to do so without being amended. Therefore, I offer to amend the amendment by inserting at the end of the amendment the following words:

"Nor shall the Legislature at any time authorize the incorporation of any transportation company with other powers than such as are necessary and proper to the business of a common carrier."

I suppose that the meaning and the application of that amendment are apparent to every gentleman. It has been said that a section of the article on corporations covers this ground, but in point of fact it does not cover it. It does not exclude or prevent the creation of companies with as many heads as Cerberus and with as many powers as the Legislature choose to confer, and to do as many things as they can conceive of. But this amendment will confine the charter of every transportation company to the conferring of such powers as are necessary and proper for the transaction of the business of a common carrier; bringing it back to the true idea and restricting such companies to their proper functions and duties. While I am opposed to the amendment taking the place of the original section, I do not want it to prevail, at any rate without this amendment of mine being added to it.

The PRESIDENT *pro tem.* The question is upon the amendment to the amendment.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem.* The question recurs on the amendment as amended.

Mr. KANE. I move to further amend the amendment by striking out after the

word "manufacturing," in the original amendment, these words:

"Articles for transportation over the works of said company."

Mr. KAINE. Now the section reads:

"No company organized to do the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing. Nor shall the Legislature at any time authorize the incorporation of any transportation company with other powers than such as are necessary and proper to the business of a common carrier."

I do not see the use of the last sentence. If it is the purpose to prevent railroad companies from engaging in manufacturing and mining, why not let it be in that way originally? If these words remain in this amendment they will be only limited to manufacturing so far as transporting over their own roads. They might engage in manufacturing and mining anything to send over the works of other companies. I do not think the clause is necessary at all; and it ought not to be in.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the amendment as amended.

Mr. COCHRAN. I hope that the amendment as amended will not be adopted, and that we shall go back to the original section. In order to test that question I ask for the yeas and nays.

Mr. SHARPE. I second the call.

Mr. CUYLER. Gentlemen will observe that the bearing of these words is quite sufficient to prevent any railroad company from having their own shops for repairs or construction. They cannot construct cars or locomotives or have any shops of repair. The words are quite broad enough for it.

The PRESIDENT *pro tem*. Is the call for the yeas and nays seconded?

More than ten gentlemen rose.

The PRESIDENT *pro tem*. The call for the yeas and nays is sustained, and the Clerk will proceed with the call.

Y E A S .

Messrs. Alricks, Baer, Black, J. S., Church, Edwards, Fell, Giffin, Guthrie, Kaine, Lilly, M'Murray, Mantor and White, J. W. F.—13.

N A Y S .

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Boyd, Brodhead,

Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, De France, Dunning, Elliott, Ellis, Ewing, Finney, Funck, Gibson, Hanna, Harvey, Hay, Horton, Howard, Knight, Lamber-ton, Landis, Lawrence, MacConnell, M'-Clean, M'Culloch, Mann, Metzger, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Parman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Struthers, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, Harry, Worrell and Wright—83.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Craig, Dodd, Fulton, Green, Hall, Hazzard, Hemphill, Heverin, Hunsicker, Lear, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Porter, Pughe, Runk, Russell, Stanton, Woodward and Meredith, *President*—37.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. CAMPBELL. I call for the yeas and nays on the passage of the section.

Mr. J. S. BLACK. Now I renew the offer of the amendment which I submitted before.

The PRESIDENT *pro tem*. Where is it proposed to insert the amendment?

Mr. J. S. BLACK. At the end of the section.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK read as follows:

"All property acquired by any company or held by another party for the use of any company contrary to this article shall be forfeited to the State; and the stockholders of the offending company shall be individually liable for its debts."

Mr. J. S. BLACK. Several gentleman, among others the chairman of the railroad committee, think that this would come in more appropriately at the end of the article, and I will for that reason withdraw it for the present, though I think it would apply as well here as any place else, with the understanding that the chairman of

the committee himself will offer it at the close of the article.

The *PRESIDENT pro tem.* The amendment is withdrawn. The question recurs on the section.

Mr. COCHRAN. I have nothing to say further with regard to this section, because it has been fully discussed, than simply this: That the section as it stands now, and as I think it ought to have stood, with the amendment of the gentleman from Somerset, does not prevent transportation companies from making their own machinery.

The *PRESIDENT pro tem.* The question is on the section.

Mr. CAMPBELL and Mr. CUYLER called for the yeas and nays.

Mr. T. H. B. PATTERSON. I ask to have the section read before the yeas and nays are taken.

The *PRESIDENT pro tem.* It will be read.

The CLERK read as follows:

SECTION 6. No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation over the works of said company; nor shall such company directly or indirectly engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.

The question was taken by yeas and nays with the following result:

Y E A S.

Messrs. Achenbach, Alney, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Chas. A., Black, J. S., Brown, Calvin, Campbell, Carey, Carter, Church, Cochran, Corson, Curtin, Dallas, De Francoe, Ewing, Finney, Funck, Gibson, Gilpin, Guthrie, Harvey, Hay, Horton, Howard, Kaine, Landis, Lawrence, McLean, McCulloch, M'Murray, Mann, Mantor, Metzger, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, John N., Reed, Andrew, Reynolds, Roeke, Ross, Sharpe, Smith, H. G., Stewart, Temple, Van Reed, White, David N., White, Harry, Worrell and Wright—53.

N A Y S.

Messrs. Armstrong, Barclay, Boyd, Brodhead, Broomall, Buckalew, Bullitt, Corbett, Cronmiller, Curry, Cuyler, Darlington, Davis, Dunning, Edwards, Elliott, Ellis, Fell, Hanna, Knight, Lambertson, Lilly, MacConnell, Niles, Palmer, H. W., Parsons, Patton, Purman, Purviance, Sam'l A., Simpson, Smith, Henry W., Smith, Wm. H., Turrell, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry and White, J. W. F.—38.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Craig, Dodd, Fulton, Green, Hall, Hazard, Hemphill, Heverin, Hunsicker, Lear, Littleton, Long, MacVeagh, McCamant, Minor, Mitchell, Mott, Porter, Pughe, Read, John R., Runk, Russell, Stanton, Struthers, Woodward and Meredith, *President*—37.

Mr. BULLITT. I now offer the proposition which I submitted before, to come in as a new section at this point:

SECTION —. Presidents, directors, officers, agents and other employees of railroad and canal companies shall not engage or be interested directly or indirectly, otherwise than as stockholders, in such railroad or canal companies, in the transportation of freight or passengers as common carriers over the works of any company of which they are presidents, directors, officers, agents or employees; and they shall not so engage or be interested in the transportation of freight or passengers over the works of any other such company, except as stockholders in such company, which may be leased, or the majority of the capital stock of which may be owned or controlled by the company of which they are presidents, directors, officers, agents, or employees.

Mr. COCHRAN. Mr. President: I am entirely in sympathy with the object sought to be accomplished by the gentleman who has offered this new section. I, however, respectfully suggest to him that this is in effect a substitute for the eighth section of the report of the committee. If the report of the committee does not meet the approbation of the gentleman from Philadelphia, if he would withdraw this proposed section here and offer it as a substitute for the whole or part of the eighth section, it would reach the very proper place where the subject matter of the amendment would come under consider-

ation. I merely suggest it to him. I have no objection to the section here, but I think it is directly a substitute for the eighth section, and probably better than the eighth section.

Mr. BULLITT. It occurred to me on reading the eighth section that the words which the gentleman from York supposes cover this provision do not cover it entirely. Again, the eighth section seems to me to cover some other matters than those provided for in this section which I now offer here as an amendment.

Mr. COCHRAN. I will merely state by way of explanation, if the gentleman from Philadelphia will permit me, that I suppose what he says is correct; that there are other things in the eighth section which are not probably covered by his amendment, especially in the latter part of the eighth section, and if it can be offered as an amendment to any part of the eighth section we could have the advantage of considering the two in connection. I think myself his provision is better than the general language of the eighth section.

Mr. BULLITT. I shall propose, when the eighth section is under consideration, to amend it, by striking out the words "except officers and partnerships or corporations composed in whole or in part of officers of each respective railroad or canal who are hereby prohibited from engaging in the business of forwarding or transporting on the lines thereof." Those are the only words which seem to me to be covered by the section I now propose.

Mr. BIGLER. I was about to suggest to the delegate from the city that if it is not the positive rule, it is the question to defer all new sections and until the original ones have been passed upon. This amendment comes in as a new section, requiring a change of all the subsequent sections, and I agree with the delegate from York that this proposition ought to be considered in connection with the eighth section, whether it be an entire substitute or not; but I make no question of order.

Mr. BULLITT. I think if you will look at it you will see that it comes in very properly just where I propose it, and that the words which I shall propose to strike out in the eighth section are probably not as well placed there as they should have been, and are better where I offer the amendment.

Mr. CUYLER. I should like to ask what practical good is proposed to be effected by this new section? As I under-

stand it, it simply provides that presidents and managers and officers of corporations shall not be interested otherwise than as stockholders in these transporting companies, but as stockholders they may be interested.

Mr. BULLITT. Will the gentleman allow me to explain?

Mr. CUYLER. I should like to hear the explanation.

Mr. BULLITT. The gentleman entirely misapprehends the section. It provides that they shall not be interested except as stockholders of the company of which they are officers. Of course, no man can be president or director of a company unless he is a stockholder of that company, and the exception is simply intended to enable a man to hold stock in the company of which he is director or officer, but it prohibits him from being interested, either directly or indirectly, as stockholder or otherwise, in a company which is doing a transportation business over the works of the company of which he is an officer or director. In plain words, it is intended to strike at that which we all think, or which I believe is generally thought to be an evil, that the directors, president or officers of a railroad company should be interested in what are known as fast freight lines. I think the section covers that.

Mr. CUYLER. It would amount to nothing as a practical fact. A transfer of stock into another name will accomplish the result just as effectually as if they have it in their own name, and therefore it will cover nothing at all. It will be utterly powerless to achieve any good.

Mr. BIGLER. I offer an amendment to supercede the amendment proposed by the gentleman from the city, to strike out all after the word "section" and insert:

"Companies composed in part or in whole of officers and managers of a railroad corporation shall have no right to transport tonnage over the roads with which said officers and managers are connected, without the consent of the holders of a majority of the stock of such corporations; nor shall they be charged lower rates for transportation or be furnished greater facilities than other persons or companies engaged in the same business."

Mr. President, at the time this subject was discussed in committee of the whole the impression made upon my mind was that it was a question for the stockholders of these companies, and I think to the stockholders it might properly be con-

fided. I know nothing about how these organizations are made, nor how they are conducted. It seems to me very clear that the managers and officers ought not to constitute separate organizations for the purpose of transacting business on the road without the knowledge and assent of the stockholders; and under those impressions I framed this amendment, intended to meet that case. It is simple, easily understood, and I think covers all the essential ground of the amendment proposed by my friend from the city.

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 delegate from the city (Mr. Bullitt.)

Mr. HOWARD. Mr. President: There is something in the amendment offered by the delegate from the city that I can support, but this question of permitting the officers of railroad companies to engage in fast lines, palace cars, and sleeping car companies, and have them on the track of the stockholders and make money at the expense of the stockholders was all fully considered in committee, and in order to meet that question section eight was prepared, which, in my judgment, covers all that is covered by this proposition, and more, and I consider that section a far better provision than this. It is no new question that is presented by this new section, but it was fully discussed, week after week, time after time, in the committee. I took the ground that it was all wrong for the officers of these corporations to be concerned in fast lines, palace cars and sleeping cars, and making money off of the stockholders' track. As a principle, I am willing to support the amendment, but I say the ground is covered and better covered in section eight, and more. The committee, after full consideration of the subject, having digested this matter fully, fairly and thoroughly, reported that section which covers the whole ground. It reads thus:

"All railroads and canals are declared public highways, and all individuals, partnerships and corporations shall have equal right to have persons and property transported thereon, except officers and partnerships or corporations composed in whole or in part of the officers of each respective railroad or canal, who are hereby prohibited from engaging in the

business of forwarding or transporting on the lines thereof."

That is the whole of this proposed new section. It prohibits the officers of these companies from engaging in the business of transportation of passengers and freight on their roads. That is all there is in this amendment, and that is embraced in section eight of the report, and much more. The amendment brings the business down to the stockholders themselves; in other words, that the stockholders shall have all the carrying of freight and passengers; but this section eight means more; it drives out the officers from that business and it puts the public upon their track and gives the public the right to have cars upon it and to load those cars, and then compels the company to furnish the motive power and give the transportation. If this amendment is adopted it will be an excuse for striking down section eight, which is a far better provision for the great public who are interested in this question. If there was nothing but this proposition standing alone, I would vote for it unhesitatingly, because I have always advocated the principle. I believe that the public suffer and the stockholders suffer continually; aye, sir, they are robbed by this plan of piling corporation upon corporation on the stockholders' track; but, nevertheless, I am constrained to vote against the amendment here, because I believe it will only be used as an excuse for the purpose of defeating a much better provision which covers the whole ground, and was fully and thoroughly considered by the committee in all its bearings.

Mr. BULLITT. One word in reply to the gentleman who has just taken his seat. He entirely misapprehends the object and purpose of this section. So far from being in conflict with section eight, that portion of it which it is intended to supply meets with my approbation; but I supposed it was necessary to give it much more point than that provision in section eight does. Section eight certainly does not reach a point quite as important as any other; that is, to prevent the officers of railroad companies from being interested in the transportation of freight and passengers over roads which may be owned, controlled or leased by the companies of which they are presidents, directors or officers. That was what led to the drawing of this section. It seems to me that the provision in sec-

tion eight does not go far enough. My purpose was to strike at that which I consider one of the greatest evils connected with our railroad system, and not with a view of crippling this article.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from the city (Mr. Bullitt.)

Mr. CUYLER. On that I ask for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. CAMPBELL. Before the yeas and nays are ordered I should like to say a word.

The PRESIDENT *pro tem.* They have been ordered.

Mr. BULLITT. I ask that the question be stated.

The CLERK read the amendment as follows:

SECTION —. Presidents, directors, officers, agents and other employees of railroad and canal companies shall not engage or be interested, directly or indirectly, otherwise than as stockholders, of such railroad or canal companies in the transportation of freight or passengers as common carriers over the works of any company of which they are presidents, directors, officers, agents or employees, and they shall not so engage or be interested in the transportation of freight or passengers over the works of any other such company, except as stockholders of such company, which may be leased, or the majority of the capital stock of which may be owned or controlled by the company of which they are presidents, directors, officers, agents or employees.

The CLERK proceeded to call the roll.

Mr. COCHRAN (when his name was called.) As I prefer to consider this section in connection with the eighth section, I am compelled to vote "nay."

The roll call was then concluded, and resulted as follows:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, J. S., Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Corson, Cronmiller, Dallas, De France, Ewing, Fell, Finney, Funck, Gilpin, Guthrie, Hanna, Hay, Horton, Kaine, Lamberton, Landis, Lilly, MacConnell, M'CLean, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purviance, John N.,

Purviance, Sam'l A., Ross, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F., Worrell and Wright—63.

NAYS.

Messrs. Armstrong, Black, Charles A., Boyd, Cochran, Curry, Curtin, Cuyler, Darlington, Edwards, Elliott, Howard, Lawrence, Mann, Parsons, Patterson, D. W., Patton, Reed, Andrew, Reynolds, Rooke, and Smith, Henry W.—20.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Carey, Cassidy, Clark, Collins, Corbett, Craig, Davis, Dodd, Dunning, Ellis, Fulton, Gibson, Green, Hall, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Niles, Porter, Pughe, Purman, Read, John R., Runk, Russell, Simpson, Stanton, Temple, Wetherill, Jno. Price, Woodward and Meredith, *President*—50.

Mr. ALRICKS. I offer a new section that has been reported by the committee, to come in at this place in our proceedings:

"Any combination or agreement by and between railroad companies or by and between any railroad and coal companies *unreasonably* to increase their rates of transportation of freight, or to increase the price of coal or of manufactured products, shall work a forfeiture of the charters of such companies."

This section has been modified in some manner. It was reported by the committee, and the word "*unreasonably*" was not inserted in it.

There may no doubt be consultation between different transportation companies and different coal companies with regard to the price of the article that they may have for sale, or with regard to the freights that are carried on the railroad, but those companies have no right to enter into any agreement by which they would *unreasonably* increase the price of coal or raise the price of freight.

Now, I trust that this provision, as reported by the committee, will meet the approbation of the House, because I am told that such a combination exists at this time, and it is the duty of this Convention to protect the people against any attempt to make them pay an undue

price for the coal that it is necessary for them to consume, not, I grant you, in this weather, but during the winter season. I have it from a gentleman in this Convention that he has direct knowledge of the fact that where a large coal operator was putting in the market a thousand tons of his coal at a reasonable price it was for the purpose of unjustly keeping up the price of coal that one of the railroad companies agreed to take his coal so that the price might not be reduced. Now, I feel that this is the proper time for this Convention to act in the premises. When I left this Convention last evening I confess that I was somewhat dispirited, because I had informed my constituents and others that I believed we would make a Constitution which would be entirely satisfactory to the people, because it would put proper restrictions upon corporations. Last evening it appeared as though "a change had come over the spirit of our dreams," and as though we were disposed to abandon the position we had taken, and I felt then some alarm that if our restrictions upon railroads were stricken down, every restriction that has been adopted by this Convention would piecemeal be struck down in the same way; but from the votes which have been taken this morning I feel encouraged, and I believe that this Convention is not disposed to back down but that they will do what is right in the premises.

I submit this section as it was reported by the committee, with as light modification, and trust it will be adopted.

Mr. BROOMALL. Mr. President: I desire to ask whether it would not be better to punish the individuals so unlawfully combining than to punish the innocent stockholders by forfeiting their chartered privileges.

The PRESIDENT *pro tem*. The question is on the section proposed as an amendment by the delegate from Dauphin (Mr. Alricks.)

Mr. ALRICKS. I ask for the yeas and nays.

The PRESIDENT *pro tem*. It requires ten delegates to second the call for the yeas and nays.

Ten gentlemen rose.

Mr. CUYLER. Before the yeas and nays are called I hope the House will pause a single moment—

The PRESIDENT *pro tem*. Over ten gentlemen rose, and the Clerk will call the roll.

Mr. CUYLER. This question was thoroughly considered and debated in committee of the whole, and the proposition was voted down by a large majority.

Mr. LILLY. I desire to have the proposed section read.

The PRESIDENT *pro tem*. It will be read for information.

The CLERK read the amendment.

The yeas and nays were taken and resulted as follow:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, J. S., Brown, Calvin, Campbell, Carter, Church, Cochran, Corson, De France, Finney, Funck, Gilpin, Guthrie, Horton, Howard, Landis, M'Clean, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Patterson, D. W., Patterson, T. H. B., Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Smith, Henry W., Smith, William H., Stewart, Turrell, Van Reed, White, Harry, and Worrell—41.

NAYS.

Messrs. Ainey, Armstrong, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Carey, Cronmiller, Curry, Curtin, Cuyler, Darlington, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Hall, Hanna, Hay, Kaine, Lamberton, Lilly, Littleton, MacConnell, Mann, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patton, Pughe, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Struthers, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N., and White, J. W. F.—46.

So the amendment was rejected.

ABSENT. — Messrs. Achenbach, Addicks, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Corbett, Craig, Dallas, Davis, Dodd, Dunning, Gibson, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lawrence, Lear, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Porter, Purman, Read, John R., Runk, Russell, Simpson, Stanton, Temple, Woodward Wright and Meredith, President—46.

Mr. HOWARD. I offer the following amendment to come in as a new section:

"No railroad, canal or other corporation doing the business of a common carrier, shall, directly or indirectly, hold shares of the capital stock, or endorse or guarantee the bonds, notes or other indebted-

ness of any other corporation, partnership or individual engaged in the business of mining or manufacturing."

Mr. J. PRICE WETHERILL. I rise to a point of order. That does not materially differ from the section which was voted down yesterday.

The PRESIDENT *pro tem*. The Chair cannot decide the amendment out of order.

Mr. HOWARD. This is a piece of the wreck of section five. This simply prohibits common carrier corporations from taking the capital stock or endorsing the bonds or notes or other indebtedness of mining and manufacturing corporations and individuals. It was stated here when this question was very fully discussed, that certain corporations along the line of these railroads have been engaged in endorsing and in guaranteeing the paper of certain individuals, building up certain great establishments to the detriment and injury of others that cannot command the same kind of endorsement or guarantee; and that after these railroad companies have embarked in the business of endorsing and building up these manufacturing companies, they have given a preference to the companies to whom they have given their favor. I know when this question was before considered in committee of the whole that this was deemed a great and a growing evil. I remember very well a distinguished delegate from the city of Philadelphia, who no longer occupies a seat upon this floor, if I understood him correctly, stated that his railroad company had guaranteed or endorsed to the amount perhaps of millions. Well, as a matter of course, if the common carrier companies are permitted to endorse the paper or guarantee the bonds of mining and manufacturing companies along the line of their railroads, they will necessarily give the preference in the transaction of their business to those that enjoy these favors.

There is no doubt at all that they ought to be prohibited specifically from endorsing the paper of individuals. There ought to be some limit put by this Constitution upon their right to go in debt. We have certainly, by striking down the second section, said that they may go on so far as the Legislature will permit them to go, because the way it now stands they can go on and endorse and guarantee bonds for the building of other railroads and in fact guaranteeing for partnerships and individuals.

They are in fact without limit except so far as they may be hereafter limited by the Legislature, and I think we should have a constitutional prohibition against their endorsing the paper of manufacturing and mining companies and individuals.

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. HOWARD. On that question I call for the yeas and nays.

Mr. FUNCK. I second it.

Mr. DARLINGTON. It will require ten to second it.

The PRESIDENT *pro tem*. Do ten gentlemen rise?

More than ten gentlemen rose.

The PRESIDENT *pro tem*. The call is sustained and the Clerk will proceed with the call.

The yeas and nays were taken as follows, viz:

Y E A S .

Messrs. Ainey, Alricks, Bailly, (Perry,) Biddle, Black, J. S., Buckalew, Calvin, Campbell, Carter, Church, Cochran, Corson, De France, Ewing, Finney, Fulton, Funck, Guthrie, Hall, Horton, Howard, Landis, M'CLean, M'Murray, Mantor, Metzger, Newlin, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Stewart, Van Reed, White, David N. and White, Harry—40.

N A Y S .

Messrs. Achenbach, Armstrong, Baer, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Bullitt, Carey, Cronmiller, Curry, Curtin, Cuyler, Darlington, Edwards, Elliott, Ellis, Fell, Hanna, Kaine, Lamberton, Lawrence, Lilly, Littleton, MacConnell, Mann, Niles, Parsons, Patterson, D. W., Patton, Pughe, Purman, Purviance, John N., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Struthers, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, J. W. F. and Worrell—47.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Corbett, Craig, Dallas, Davis, Dodd, Dunning, Gibson, Gilpin, Green, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, Long, MacVeagh, M'Camant, M'Culloch, Minor, Mitchell,

Mott, Porter, Runk, Russell, Simpson, Stanton, Temple, Woodward, Wright and Meredith, *President*—46.

The *PRESIDENT pro tem.* The next section of the article will be read.

The *CLERK* read as follows:

SECTION 7. No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation; and the charges for freight and fares for passengers shall for equal distances in the same direction be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance, and no special rates or drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles.

Mr. J. PRICE WETHERILL. I wish to say a word before this section is acted upon by the Convention, and before doing so I move to amend by striking out all after the word "thereof," in the fourth line. I shall be very brief in what I have to say on the subject, and very practical, for it is a practical matter.

Whenever the subject of railroads comes before this Convention it is generally followed by very eloquent remarks from most of the gentlemen on this floor. I cannot for the life of me understand why in a matter of such a practical character as this those eloquent speeches about hydra-headed monopolies and other very wonderful and fanciful imaginations should be brought forth.

Now, under this section the charges for freight and fares for passengers shall be the same for a shorter as for a longer distance. How would that work? The freight from Philadelphia to Chicago, a distance of one thousand miles, is to-day forty cents per hundred pounds. Now, if this section prevails, the freight from Harrisburg to Philadelphia would be four cents per one hundred pounds; the freight from Philadelphia to Lancaster would be three cents per one hundred pounds; and if any gentleman knows anything about freights

and transportation he must certainly know that these rates with such charges would be simply ruinous to the railroad company compelled to carry out any such regulations.

Again, extra charges may be allowed under this section for distances not exceeding fifty miles. How will that work? The rate from Philadelphia to Lancaster under this ruling would be three cents per one hundred pounds and the rate for freight ten miles this side of Lancaster would be twenty-five cents per one hundred pounds, or just what the railroad company would desire to charge. The rate named is nothing in the world but a fair and reasonable and liberal rate, and what would be the consequence? Not a commission merchant could do business on the line of the Pennsylvania railroad inside of fifty miles from Philadelphia, and they would all have to go to Lancaster where their freight would be so much cheaper.

There is unreasonableness in the whole thing, and when you come to work it out it will not accomplish, in my opinion, a good purpose. The same thing was tried in Illinois. They left this matter to the Legislature and the Legislature passed an act discriminating in the same way as indicated by this section, and the whole State is in arms to-day against it. Lines of railroad in the interior to-day on freight have been compelled to make charges of such rates locally as absolutely to drive the transportation from the State, to ruin the railroads which have been built in the State of Illinois, and to throw trade upon competing lines controlled by capital outside of the State. The freight to-day from the eastern line of the State of Illinois is forty cents per one hundred pounds, but when you go one hundred miles back into the State of Illinois, on account of these local rates which must be charged in order to make local freight pay and railroads live, sixty-five cents per one hundred pound, and as a consequence, the land on the eastern line of Illinois is enhanced in value thereby, and the land in the central part of Illinois is injured in value thereby. The farmers are beginning to see exactly how this thing works, and they are up in arms about it, and they are willing and anxious to repeal this act of Assembly.

Again, take the town of Quincy, Ill., which is on the western border of the State, and connected by two roads, one via St. Louis and the other via Chicago.

The town of Quincy is about two hundred miles, I am told, from the city of Chicago, and they, to secure the great through freight, carry that through freight at a low rate; but by this law they are compelled to charge the same freight for equal distances, and when they found that they must charge a fair local freight it so increased the through freight and brought it up to such a figure that the through freight to-day around Quincy, Ill., goes through the State of Missouri, via St. Louis, and over roads over which the State of Illinois has no control and into which the State of Illinois never put one dollar of capital, thus contributing to railroad improvements outside of the State of Illinois and injuring the city of Chicago to, I am told, the extent of a daily receipt of many car loads of freight per day.

Now, what will be the effect of this section? It will be simply this: That the through railroad companies must do one of two things; if they must charge the same rate for a lesser as for a greater distance, they must either put up the rates of freight upon the local charges to such a figure as will pay, and if they do that they thereby increase the through freight to such a rate that other roads competing will take the traffic and they will lose all their through freight. But, on the other hand, if they make their local freights the same as their through rates it will, as I have shown, result in putting the local freights at such a low figure that it will cripple and ruin the companies who will undertake to do that sort of business. That is the proposition fairly and clearly stated. The gentlemen of this Convention can take either horn of the dilemma. Either the one or the other will be the result in the State of Pennsylvania just exactly as it was the result in the State of Illinois, and our great railroad enterprise, in order to compete with the other trunk lines, will suffer an immense loss.

Now, I desire to call the attention of the gentleman to what the State of New York has done in this regard under her new Constitution. Every one must admit that the State of New York certainly has suffered under railroad mismanagement and under railroad monopoly and under railroad control long enough. I have not heard that we have Fisks or Goulds or men of that sort managing our railroad companies. Our railroad companies, through lines and local roads, are managed in the main by honest men, men having not only the interest of the stock-

holders but the interest of the State at heart; and the results show it. But New York perhaps has been in a different condition; and what does the New York Constitution do in regard to the railroad companies? So jealous were they of their own interests, so jealous were they of their manufacturing and their commercial interests, that they passed in their Constitution just two lines on the subject of railroads: "The Legislature shall not authorize the consolidation of railroad corporations owning parallel and competing lines of roads," no more, no less. Here we are loading down the organic law by harsh iron rules about the details of which very little is known by the members on this floor. The business men on this floor probably know as much as the lawyers do about it, and the business men confess themselves that in the working of all these harsh, inflexible sections, no man can tell the injury which they will inflict, and I do hope we shall be extremely careful not to cripple the great railroad interest of this State.

For these reasons, I do hope we shall either vote for the amendment I have proposed or vote down the section.

MR. J. R. READ. Mr. President: I agree with the delegate who has just spoken, but I think that his amendment could be improved by adding to the words of the section that are left the word "unreasonable" after the word "any" on the second line, and the words "or between" after the word "against" in the third line. The section would then read:

"No corporation engaged in the transportation of freight or passengers in or through the State shall make any unreasonable discrimination in charges for the carriage of freight or passengers against or between the people thereof."

Now, I desire to say a few words on that subject.

THE PRESIDENT *pro tem*. Does the gentleman offer that as an amendment to the amendment?

MR. J. R. READ. I do if it is in order.

Mr. President, I am in entire sympathy with what I believe to be the desire of the Railroad Committee of this Convention, and that is to prevent any unjust, unreasonable, or undue discrimination against the people of this State as compared with the people of other States, or between the people of this State as inhabitants thereof. But I do not believe that that object can be attained by the provisions of this section. If the gentle-

men of this Convention will turn to this section, and examine it critically, they will find that it is impossible to carry it out, or impossible to attain by its provisions the object that they desire. It provides in the seventh and eighth lines that for freight carried on the works owned or controlled by such corporations, charges for freight for equal distances in the same direction shall be the same.

Now the effect of these lines is that you would be able to have transported equal distances, for the same price per ton per mile, a ton of feathers or a ton of pig-iron.

MR. EWING. No.

MR. J. R. READ. I beg your pardon. Those are the words of the section, and the construction I have placed upon them is fair and reasonable, and the only one they are properly susceptible of, although it may not be the intention of the committee that they should be so construed, and I hardly believe that it can be.

MR. CORSON. There is no difference in weight.

MR. J. R. READ. There is no difference in weight, but one takes up a good deal more room than the other. This illustration shows the false economy of the provisions I have referred to.

Now, the subject of *legislation*, in regard to the regulation of rates for the carriage of passengers and freights on railroads, has received considerable attention from the Legislatures of other States and the Parliament of Great Britain, and it has been found to be a fallacious doctrine that improper charges could be cured by legislation. No general law or special law has ever yet been framed to remedy the mischief that prevailed by reason of unfair or improper charges for transportation; and on that point I should like to turn the attention of the members of this Convention to the report of the Board of Railroad Commissioners of the State of Massachusetts. That board was organized under the provisions of an act of the Legislature of Massachusetts for the purpose only of protecting reforms and supervising railroad companies, in the year 1869. It is composed of some of the ablest and purest men of that State, namely, Mr. Charles Francis Adams, Mr. J. C. Converse and Mr. A. D. Briggs, all men of sound and discriminating judgment. They have given this subject a very great amount of careful investigation, and I should like

to read to the Convention, if they will bear with me for a few moments, their opinions on this subject. I quote from their report:

"There are then two questions on which this board now feels called upon to express opinions: First, How can the existing corporations most effectually be brought into a close sympathy with the wants of the community and the popular expectations?—and, second, in case of the failure of all attempts to create this close sympathy, how can the community be most readily prepared to substitute a new and more satisfactory system of management for that now existing?

"These questions were somewhat considered during the session of the last Legislature. A law was passed declaratory of the general right of the Legislature to regulate at its direction all tariffs of fares and freights on the several railroads of the Commonwealth without regard to the amount of net earnings. The commissioners are unable to see how any satisfactory results can be arrived at through action under this law. The grounds on which they base this impression can be stated in very few words. All legislation in the direction indicated must be either general or special—general as applying to all the railroads of the Commonwealth, or special as applying to some individual one of them. No general law of this nature has yet been framed adequate to meet the wants of the case, though attempts at it have frequently been made; nor, indeed, do the commissioners now see how such a law could be framed. Not that it is here meant to imply that the regulation of railroads by law is impracticable, but the doubt is confined to their regulation in this particular way. Other methods have been, and hereafter will be suggested, and their practical merits can only be ascertained after trial; this method has, however, repeatedly been tried and with a uniform result. The cause of failure in this case is indeed most apparent. A general law regulating fares and freights, which would very slightly touch one road, would inevitably ruin another; a tariff which would apply to one class of articles would be simply ridiculous when applied to another. The law found generally on the statute books provides a *minimum* per mile for each passenger and for each ton of freight. A law on this principle, framed to meet the case of the Boston and Albany road by materially reducing its present rates,

whatever result it might produce on that company, would speedily send the Housatonic road into insolvency; a law which allowed the Housatonic to earn a dividend would have no application to the Boston and Albany. So of descriptions of freight; a rate per ton per mile applicable to coal or pig iron, would produce results eminently unsatisfactory to the corporations if applied to feathers, wicker-work, wooden-ware, or household furniture. It is, however, useless to discuss this question; a general law which shall meet the circumstances of all the separate roads and provide for all classes of freights, degrees of speed and arrangements for comfort, is a practical impossibility."

And yet that is precisely what this article proposes to do. In other words, it is nothing but the child of its parent, the equal mileage system. That equal mileage system has been found by the experience of railroad men and by the experience of the communities that have tried it to be impracticable as a general system; and yet gentlemen seek to imprint it with inflexible rigidity, with hard and fast lines, into the fundamental law of this Commonwealth. I beg them not to attempt to incorporate into this Constitution what is deemed in this report, from which I propose further to read, a confessed failure.

Now, sir, the object of this section is in a general way which is all the more objectionable to regulate fares and freights on railroads by saying that for equal distances in the same direction the charge shall be the same; that is to say, for any fifty miles or one hundred miles on the Pennsylvania railroad, or any other railroad, the charge shall be the same. As the whole can be no greater than its aggregated parts, it is nothing more nor less than saying that the charge for transporting freight upon any fifty miles on any one railroad shall be the same as the rate for the transportation of freight upon any other fifty miles of the same railroad. This in effect is no more than the equal mileage rate, or a fixed rate per ton per mile—at least, that, in my opinion, is its logical sequence.

Now, sir, what do we find to have been the result of the careful investigation and searching inquiry made by this board of railroad commission from whose report I quote upon this subject? As they have expressed their views concisely and well, I shall use them as part of my argument. I am sure the Convention will not regret

hearing them. In their report made in this year to the Legislature of Massachusetts, after four years of continuous service, they use the following language:

"By chapter fifty-eight of the Resolves of 1872, this board was directed to consider the subject of regulating railroad fares and freights by law, and report in the form of a bill or otherwise on the first week of the next Legislature.

"This question was discussed at some length in the last annual report of the board. (Third annual report, pp. 170-4.) Since that report was made, the whole subject has been most thoroughly investigated by a joint select committee of both Houses of the British Parliament, and the evidence and documents submitted to that committee, and its own conclusions thereon, have been published in a 'Blue Book' of more than one thousand folio pages. In various of the State Legislatures of this country, also, measures have been brought forward, of which copies have been transmitted to this board, all of which bore closely on the matter referred to in the foregoing Resolve. There is, indeed, no question connected with railroad legislation which has occasioned during the last forty years so much discussion or so many statute enactments as the attempt to regulate fares and freights by law. There are now in force on the statute books of various counties, laws of every conceivable description, from a simple act establishing charges at so much per mile for each traveller or ton of freight carried by rail, to enactments of the most elaborate nature, under which roads are classified, goods enumerated, periodical revisions provided for, and differential, special and through-rate tariffs, with distinctions of terminal charges, are all specified in detail. The efforts in this direction have, indeed, been systematically pursued both in this country and in Europe, from the first inception of the railroad system down to the present day.

"In the earlier days of the railroad system, and especially in America, the acts regulating fares and freights were very simple, and apparently there could be no difficulty in their enforcement. They limited charges to so much per mile for each passenger and for each ton of freight; adopting what is known as the equal-mileage rate. Economically there can be no doubt whatever that this legislation was founded on a wrong principle. If the amounts paid by the public are in any degree to correspond to the cost of the

services rendered by the corporations, then the distance that a person or thing is carried has very little necessary connection with the cost of carriage.

"This principle is perfectly well established, and has been repeatedly dwelt upon in the reports of this Board. Its truth can be made very apparent by a simple illustration. Lynn is ten miles from Boston, and Chicago is a thousand. An article of merchandise going to the one place or the other has to be received, handled, stored, placed on a car and forwarded; on reaching its destination it must be unloaded, stored and delivered by the company, or received and unloaded by the consignee; in either case, the car is necessarily subject to delays, during which it earns no freight. Under these circumstances it is very apparent that the fixed cost incurred by the railroads in the work of transportation—that cost which is common for all articles or persons, no matter how long or how short a distance they are to be carried—must constitute a very considerable part of the whole cost. So obvious is this fact, that it is well known that the corporations earn large net profits on their long business at a third or quarter of that rate per mile, which is barely remunerative on short business. The simple and obvious fact that wheels earn money only while they are in motion, and that they earn it as long as they are in motion, has constantly been disregarded by those seeking to frame laws regulating fares and freights. If a car can be loaded with passengers or goods and started on a journey of two thousand miles, the wheels of that car are steadily earning money for days together, though moving, perhaps, at low rates; if, however, the cost of starting that car, including the fixed outlay of the corporation in officers, employees, station-buildings, real estate, rolling stock and road-bed—an outlay which is in large degree the same for long transportation or for short—if this cost has to be distributed over a few miles only in which the wheels are in motion, then it is evident that the cost of transportation per mile must largely increase. If it is limited by law, and not allowed to increase, then the long traffic must pay a loss on the short traffic.

"As regards merchandise, this is so apparent that it needs only to be stated to be understood. Of course this economical principle must not be confused with the abuses perpetrated by the railroad

corporations in charging heavier rates to intermediate than to competing points, or with the extortions at times practiced on local business.

"As regards the carriage of passengers it is equally true. The longer the distance travelled the greater the profit on each passenger, and, numbers being equal, the cheaper he can be carried. In practice it is apparently otherwise, as it is notorious that the fares for short distances are the lowest; but this is apparent only, and it is due to the numbers transported. The accumulation of small profits, by dividing the cost of running the train among vast numbers of persons, operates in exactly the same way as if it were distributed over a great distance measured in miles.

"The equal-mileage laws were therefore founded on the erroneous principle that the fare or freight should be proportioned to the cost of carriage, and the cost of carriage was held to be uniform without regard to distance. An infinite number of acts based on this principle are to be found in the statute books of this country. Nowhere, however, has the system been more persistently followed out than in Ohio. In that State there are at least nine distinct rates for the transportation of passengers and freight authorized by law, and yet others are under discussion. The matter has been incessantly legislated upon, and yet the State railroad commissioner, in his report for the year 1870, asserts that these laws are the most fruitful source of complaint, and that, 'there is not a railroad in the State, whether operated under a special charter or the general law, upon which the laws regulating rates are not in some way violated nearly every time a regular passenger, a freight or mixed train passes over it.'

"On those roads where scrupulous effort is made to act within the limits of the law, it is violated in some instances by charging passengers who fail to purchase tickets an excess of regular ticket fare, and in others by charging an excess of the legal rate for short distances upon the purchase of tickets; and in almost every instance where light and bulky articles, such as furniture, willow-ware, feathers and the like are carried, a greater rate per ton per mile is charged than the law allows, and articles of a hazardous nature or of great value are charged in excess of their true weight. While this is done often without complaint, and the justice

of the rule is conceded by many, it is nevertheless a violation of the law.' * *

"A strict enforcement of the provisions of the law would, however, compel some companies to ultimately suspend business, prohibit the transportation of certain articles by rail or compel their transportation below actual cost.

"In their report for 1872 the commissioners referred to the English system of Parliamentary trains as an exceptionally successful result of legislation on fares and freights. The law in this case was intended to compel the companies to provide certain slow and cheap trains at a low rate of fare for the vast population of the very poor class which is to found in Great Britain. This result, it was implied, the law had accomplished. The report of the Parliamentary committee which has just been referred to throws grave doubts on this conclusion. On the contrary, the committee says that 'the history of the traffic in third-class passengers affords a strong argument against attempting to foresee and provide for a want of this description by imposing general, compulsory and permanent obligations on railway companies. It has been shown that Parliament, anxious to protect the lower classes at any rate, from the apprehended monopoly of railway companies, imposed special obligations on the companies supposed to be in favor of these classes, and attached to these obligations a special exemption from railway taxation. It has also been shown that railway companies, in their own interest, are now doing for third-class passengers more than Parliament ever thought of requiring; that third-class traffic is one of the most growing sources of profit, and that the present operation of the special legislation on the subject is to give a very questionable exemption from general railway taxation, to create confusion and litigation, and to give the companies inducements for withholding from third-class passengers facilities which they would otherwise give. The ill-success of this attempt may well justify hesitation in entering upon further general legislation of the same kind.'

"The familiar law in force on the New York central road, and which is very frequently cited as an instance of the successful operation of simple laws regulating fares, is of a different character. Under it two cents per mile is the regular fare which the road is allowed to charge, and the rule applies to all trains, descriptions

of travel or rates of speed. No package, commutation or season ticket is sold at any reduced rate, and consequently the man who travels every day, and by accommodation train, pays exactly the same rate (two cents) per mile, as he who travels once a year by express.

"When a similar law, applying to all roads in the Commonwealth paying more than eight per cent. dividends per annum, was proposed in the Legislature of 1871, the discussion upon it elicited such unexpected results from its operation that the measure was rejected. For instance, though the bill was limited to roads paying annual dividends of eight per cent. and upwards, the effect of competition made it apply to other roads which either paid less dividends, or, in some cases, had never paid any dividend at all; practically threatening such roads with bankruptcy.

"Again, there is not a considerable business centre in the Commonwealth which is not surrounded by towns in which people have settled, built houses and effected every arrangement for residence, relying upon a regular and very cheap access by rail to their places of daily business. A law which substituted a uniform rate of two cents a mile for the commutation rates at which such persons now travel, would necessitate an entire change in their modes of life. Such a system might work well where a community has grown up under it; if, however, suddenly by act of Legislature introduced into a community which has established itself under the discriminating tariffs always hitherto in use in Massachusetts, the commissioners do not see how it could fail to produce most disastrous results.

"How serious, as regards regular season ticket passengers, such a change would be, may be inferred from an examination of the tables at the close of this report (No. 127.) It will be seen that those who travel most on the roads of this State, instead of paying two cents per mile, now pay but from one fourth cent to one and a half cents per mile.

"The rule of uniform mileage rate is also wholly opposed to the fundamental principle of taxation, that the burden should in all cases be so imposed as to rest most heavily where it will be least felt. The man who travels every day over a given route has a right, on every principle of economy, to buy his passage at wholesale rates, and to him a concession is a matter of great moment, whereas it is of com-

paratively little consequence what he pays, within reasonable limits, to the man who travels very rarely. A law, therefore, which imposes an additional cent per mile on the daily traveler to give it to the occasional one does not seem to place the burden of taxation where it is least felt.

"The commissioners are inclined to believe that the system of discriminating rates now generally in use on the Massachusetts roads is not only more profitable to the corporations than the uniform price per mile system of the New York roads, but it at the same time is more advantageous to the traveling community through its practical adjustment of the burden.

"The equal mileage rate has not only been found to be wrong in principle, but its universal application is apparently out of the question. It might, indeed, be practicable if its expediency were admitted, if all the railroads in the State were consolidated into one corporation and operated by one responsible management. In such case it would be possible to strike an average, and, by making the profits on one portion of the system counterbalance the losses on another, arrive at the basis of a law. Such a policy of consolidation, however, has never been encouraged by the Legislature of Massachusetts. There are accordingly now in this State no less than fifty-five corporations owning on an average forty miles of road each, while some thirty-five distinct boards of managers control about sixty miles each, varying from two hundred and fifty miles in the case of the Boston and Albany to less than six in that of the Fall River, Warren and Providence. These corporations represent almost every conceivable form of railroad existence. Some are very wealthy, others are very poor, and yet others are bankrupt; some pay dividends, but many do not; some are through roads, others are local branches; some run between large cities and through a level and densely populated region, others are constructed through broken and sparsely settled districts; some find their profit in carrying passengers, others in carrying freight, and yet others in the two combined; some derive a large income from the suburban travel of those holding season tickets, others have scarcely any local travel at all. To take such a system as this and to apply to it one hard, unyielding law of charges, would be an experiment which the mem-

bers of this board are not prepared to commend. In their opinion it would be not only wrong in principle but impossible of application.

"It remains to consider the expediency of special laws regulating in detail the charges of particular roads; and general laws classifying roads and regulating charges in accordance with such classifications, discriminating for all possible differences of condition or vicissitudes of traffic.

"The precedents for special laws regulating in detail the charges of certain roads to which alone they are applicable, are very numerous in European legislation. They have, however, by no means resulted advantageously. Of them the parliamentary committee of 1872 says: 'Legal maximum rates afford little real protection to the public, since they are always fixed so high that it is, or becomes sooner or later, the interest of the companies to carry at lower rates. The same thing is true of terminal charges. The circumstances are so various and so constantly changing that any legal maxima which might now be fixed would probably be above the charges now actually made, certainly far above those which will hereafter be made. Indeed, attempts made in 1861 and 1866 to fix a maximum for terminals broke down, because the only maximum that could be agreed upon was so much beyond the charge then actually made to coal-owners that the coal-owners feared it would lead to a rise in that charge.'

"And again: 'The attempt to limit rates and fares by the principle of fixing a maximum has almost always failed in practice, and is almost always likely to fail, for the simple reason that the Parliamentary committees and authorities, by whom such limits are decided, cannot do otherwise than allow some margin between the actual probable rate, as far as they can forecast it, and the maximum rate; and cannot foresee the contingencies of competition, of increase in quantities, of facilities or economy in working, or of alteration of commercial conditions, which may occur in the course of years after such limits have been arranged by them.'

"The result of thirty years of successive and wholly abortive effort in this direction in England has been that Parliament has at last settled down in the conviction that the development and necessities of trade in practice always have nul-

lified, and inevitably must nullify the provisions of special acts, no matter how carefully and skilfully they may be prepared. This, too, has hitherto resulted from common consent, all parties recognizing the fact that these enactments did not possess the flexibility absolutely requisite to the movements of modern commerce.

"In the United States the difficulties in the way of this class of legislation would be infinitely greater than in England. There the several roads are at least throughout their entire lengths under the control of one central legislative power. In America this is not the case. Few roads of any importance lie wholly within the limits of any one State, and the process of consolidation is rapidly reducing the number. Practically, in every case, the laws of any one State apply only to the segments of an entire line. The real seat of an existing grievance is often therefore a thousand miles removed from the point where it makes itself felt and where the remedy is asked for. Were these difficulties all removed, the most serious difficulty of all would still remain. To be done successfully this work must be done very thoroughly and very intelligently; those having it in charge must be thoroughly informed on the whole theory and practice of transportation by rail, and fully alive to all its fluctuations and vicissitudes. The labor involved, if the laws were to remain anything more than dead letters on the statute book, would consequently be enormous, and any Legislature which undertook it must not only remain in continuous session but must contain within itself an unusual proportion of railroad experts. Under any other conditions the experience of Great Britain would but repeat itself.

"The only other method of dealing with the subject which suggests itself is through general laws classifying roads and regulating charges, in accordance with these classifications, in such a way as to allow for all probable differences of condition or vicissitudes of traffic. This is the plan now most in favor in this country, and a number of attempts have been made to devise a satisfactory form of law to meet the case. One of these has been placed upon the statute book in Illinois, and others have been prepared and submitted to the Legislatures of other States. It is impossible to speak certainly of such a system in advance; but the commis-

sioners are unable to find in it anything which has not been repeatedly tried with unsatisfactory results elsewhere. It is the English measure of maximum special rates generalized so as to cover the case of several corporations instead of one. It would appear that the more such measures are extended in their operation the more complex they become, and the greater must be the difficulties in the way of their successful operation. Whatever weight attaches, therefore, to the experience which has been earned respecting the simpler and earlier experiments, attaches in a yet greater degree to the more general and complex. The Legislatures undertaking to deal with the subject have but a partial jurisdiction over it; under the effect of competition the laws intended to be applicable only to roads of one class become applicable to those of another; there is no discrimination as regards special requirements either of localities or of corporations, provided they fall within the lines of classification, and a passenger road may find itself put on the same footing as a mineral road; it is almost an impossibility that any measure could be framed at once sufficiently precise and sufficiently flexible to meet the requirements of so complex a system; and, even were it possible to frame it, it is extremely improbable that it could pass the ordeal of any legislative body.

"The final difficulty with all legislation of this class is its excessively dangerous and politically corrupting tendency. It forces the corporations, whether they wish to come there or not, into the lobby of the Legislature and the rooms of committees and commissions. They are forced there for the protection of their interests; for the essence of the system is, that certain persons, whether the Legislature itself or officials designated by the Legislature have devolved upon them the responsibility of establishing the revenue of property belonging to others. The commissioners have grave doubts as to the success of any effort at the regulation of the railroad system, which practically effects a separation between the ownership of a railroad and its management.

"Entertaining these views as the result of their investigations, the commissioners have not thought it expedient to report any bill or form of law in which it would be apparent that they themselves entertained little confidence. It is unnecessary to add, however, that should the Legisla-

ture or the Joint Committee on Railways arrive at a different conclusion as to the expediency or practicability of legislation of the nature of that under discussion, the members of this board will contribute every assistance in their power towards maturing an effective measure."

Now, Mr. President, will this Convention treat this subject lightly, and are they quite sure that the section under consideration has within its four corners the panacea for the ills with which we are afflicted. I fear it will be found to be sadly wanting, and for this reason I shall vote for the amendment of my colleague, (Mr. J. P. Wetherill,) and at the proper time, if his amendment should be adopted, move to insert the words, "unjust, undue or unreasonable," before the word "discrimination," where it occurs in the remainder of the section.

Mr. CAMPBELL. Mr. President: This section, like most of the other sections of this report, is met at the outset with a savage attack upon it by the advocates of railroad corporations. All the heavy guns are brought to bear at once upon the whole report of the committee, with the hope, I suppose, that under the cover of a heavy fire the section immediately under consideration will be annihilated. But we must not be frightened at these desperate attacks. We must consider the section without regard to them. Now, sir, there is a great deal to be said in favor of this section, or at least in favor of the principles embodied in it. Above all, there is this to be said, that the people of the State—not the stockholders in railroads, not the railroad managers, not certain classes of business men engaged in manufacturing or mining, but the masses of the people of the State—desire some provision of this kind.

The gentleman from Philadelphia (Mr. J. Price Wetherill) stated a little while ago that the Legislature of Illinois had passed a law attempting to regulate the charges for freight and fares, as we propose to regulate it in this section, and that the people of Illinois were up in arms against it. He is laboring under a monstrous delusion. It is just the other way. The people of Illinois are up in arms in favor of the law and against the Supreme Court of the State, which decided that the law was unconstitutional. Less than a month ago, when the judge who rendered the decision was a candidate before the people for re-election, he was swept out of power by a popular hur-

ricane, you may call it, and another man put in his place. That shows the feeling of the masses of the people of Illinois, and it is the same, though to a less extent, in this State.

In considering this section, we have to decide two questions. First, shall we sacrifice the interests of the people of this Commonwealth for the sake of enabling railroad corporations to build up an immense western trade and enrich their stockholders, managers and directors? Shall the interests of the people of this State be subordinated to the interests of the people of other States? Shall we for the sake of bringing into the State the stream of traffic from the West that is so much talked of, put up our local freights and make our people suffer in consequence of it. Would it not be better, if it be necessary for the protection of the people of this State, to partially cut down our western traffic—to have less of it—so that we can have the interests of our own people protected? Let our western traffic grow in proportion as the real well-being of our people requires it.

The second question that we have to decide is, shall we in order to enrich the people in large and populous cities, in order to accumulate wealth, in certain portions of the Commonwealth, make the agricultural population and the other people outside of the cities, suffer from the exactions of railroad corporations in regard to freight and passenger fares? Shall the agricultural population be compelled to pay out of their labor to enrich the people in the large cities? That is after all the real conflict. The capitalists who are engaged in manufacturing and mining enterprises, whose interest it is to aggregate population in cities, so as to provide ready markets for their products, are all opposed to this section; but the people in the agricultural districts, the large masses of the people of the State and of the country are in favor of some provision of this kind; and I say to gentlemen unless we provide some remedy for the evil that exists and that is so bitterly complained of, unless we adopt some provision like the one contained in this section, the people of the State of Pennsylvania will sooner or later do what the people of the State of Illinois have done.

Mr. LILLY. I should like to ask the gentleman a question, with his permission.

Mr. CAMPBELL. I prefer to go on, as my time is limited. We have almost

reached the hour for a recess. The gentleman can speak when I am through.

The people of Pennsylvania, if they do not get something of this kind, will rise in their might, and will take the law into their own hands. If they cannot get such a law as they ask for, from the Legislature, (and it is confessed on all hands that they cannot,) if they cannot get it from this Constitutional Convention, which is their last legal resort, then they will rise and get what they want by sheer force.

Gentlemen, I do not wish to have mob law in this State; I do not wish the people to act outside of the law; but unless we give them what they demand, unless we insert some provision in the Constitution of the kind proposed in this section, I tell you, they will take the matter in their own hands, and get what they want, just as the people of Illinois will, in time, get what *they* want. I hope, therefore, this section, or the substance of it, (for if gentlemen wish to amend it so as to make its phraseology better they can do so,) will be adopted.

The PRESIDENT *pro tem*. Is the Convention ready for a vote?

MR. CUYLER. I hope the vote will not be taken on this question in a hurry. It is now within two minutes of our time of adjournment, and I therefore move that we take a recess.

MR. CARTER. I second the motion.

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.

RAILROADS AND CANALS.

The PRESIDENT *pro tem*. When the Convention took its recess, the question pending was the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill) to strike out all after the word "thereof," in the fourth line, to the end of the seventh section of the article on railroads and canals.

MR. AINEY. Mr. President: Before the vote is taken I desire to suggest one thought to the Convention. It seems to me that the amendment ought to be adopted and that portion of the section stricken out. Perhaps I can best illustrate why I object to that portion by instancing the experience we have had in

my section of the State. On the Lehigh Valley railroad, Mauch Chunk is the distributing point. All trains are made up at that point. Through freight, through coal, or other articles that are shipped, are put in one train, and local freights in another train. Five or six local trains run down our valley daily and distribute coal and other articles to the different manufacturing establishments along the valley. Now, as I understand this section it would require all local freight along the valley to be carried at the same rate of freight or at least that a higher rate of freight should not in any case be charged than is charged on freight that runs through to the end of the Lehigh Valley road.

If members will but give the matter a moment's reflection they will see that trains made up at Mauch Chunk, to go directly through to Easton without stopping, will run over that distance in a much shorter time, with less wear and tear on the cars and locomotives, and with a less number of hands on the train, than local trains. The expense per ton or per car will be materially less in conveying the through train of coal or other freight to Easton than it will be to the town where I reside, Allentown. There is justice in charging a higher rate of freight on coal that is stopped at Allentown and taken out of the way train than there is on freight that goes through to Easton on a train making no stops. In the manufacturing enterprise with which I am connected we receive say twenty-five to thirty cars of coal per day. We have been paying more freight on that coal constantly than is paid through to Easton, and I maintain that it is right. The railroad company cannot afford to deliver that coal to us as cheaply in their way trains, stopping at the different points along the valley, as they can deliver freight that goes directly through to the end of their road without stopping.

MR. COCHRAN. May I ask the gentleman a question?

MR. AINEY. Certainly.

MR. COCHRAN. How far is it from Mauch Chunk to Allentown?

MR. AINEY. Twenty-eight miles.

MR. COCHRAN. What is the distance between Mauch Chunk and Easton?

MR. AINEY. Twenty miles further, forty eight miles.

MR. COCHRAN. The latter part of this section allows a discrimination within fifty miles.

Mr. ARNEY. The principle remains the same. It does not allow a higher charge for a shorter distance. I will take the Pennsylvania railroad company, which extends more than fifty miles. If the Pennsylvania railroad company makes up its trains at Pittsburgh for Philadelphia and has not to stop at any way station, it can carry that freight at a less rate per ton or per car than it can way freight that has to be distributed along its road at all its different stations.

Members, if they will direct their attention to it, must see that we cannot fix an absolute arbitrary rule which shall apply in all cases. I apprehend that the most that this Convention can properly do, in any case, is to limit the charges so that they shall be the *same upon the same class under the same circumstances*. Any attempt to go beyond that in my judgment will prove an utter failure and will produce a result directly opposite from that which we intend or desire. I hope, therefore, that this amendment will be adopted, and the portion proposed stricken out.

Mr. LILLY. Mr. President: I entirely agree with what the gentleman from Lehigh says, that we ought to continue further to carry the matter out. Now, take the coal at Mauch Chunk which is deposited along the line of the road, which is one thing, and the coal that goes beyond the road and comes in competition with the upper Luzerne coal and with the coal from the Schuylkill and from the other mining districts. If the Lehigh Valley railroad company, and the Lehigh and Susquehanna, and New Jersey Central railroad company, that carry the coal out of that valley, could not discriminate in our favor our article would be shut out entirely from the New York market. We should also be shut out entirely, as we are pretty nearly crowded out now, from the Philadelphia market for the same reason. When this section passed the committee of the whole, I thought it was so worded that it would allow that thing to be done, and that the only restriction, according to my understanding from the debate at that time and the manner in which the section was left, was that there was nothing in it that would prevent that sort of thing.

The only thing that was in it was that coal leaving Mauch Chunk, going down the valley, or any other freight on any road, might be charged as much to Allentown as it was charged to Easton, Easton

being eighteen miles further, but no more of a charge could be made to Allentown; but, if I understand the discussion this morning by the gentleman from Philadelphia, (Mr. Wetherill,) in the way that he apprehends the section now, that is not so. If it is not, it should be made so, because that was really the understanding of the committee of the whole when it left the committee of the whole, that the railroad companies were to have full power to discriminate, so as to carry any competition with the great through roads north of us and the great through roads south of us. If you pass this section in any other way, you dwarf every one of our through roads and trunk lines into mere local roads, and leave them merely for the accommodation of local trade, and we should lose entirely the *prestige* that we have had, of having the great carrying trade to the west pass through Pennsylvania.

Now, if the chairman of the committee does not apprehend it in that way, and if the Convention does not understand that it allows that, if it is not written so that we can clearly understand it, I am certainly opposed to it. I am perfectly willing to give the railroad companies the right to discriminate in such a manner that they can compete with other roads. I do not want their discrimination, however, to go so far as to work an actual wrong to the people of the State or the people along the lines of the different roads.

Mr. BAER. I should like to vote for this section, but I opposed in committee of the whole the section as it stood then for the reason that it necessitated a charging at the same rate per ton per mile for a long distance as it did for a short. After a long discussion this section was hurriedly agreed to, but not fully considered, for I assert now that it does involve precisely the same thing that it did before, and that it compels the companies to charge the same rate per ton per mile as the old section did; and to do that now is, first, to cripple the great through lines of this State, and, next, to make the people pay an increased rate both for the carriage of passengers and freight, because you drive from this State entirely all the freight that seeks to go from the Atlantic seaboard to the far west and make it pass over the New York or Baltimore lines. No other alternative exists. No great company expecting to do a great trade, such as the Pennsylvania

Central is bound to do now, can possibly live if this section is incorporated in the fundamental law.

While there is much in the section that is good, indeed, while all that is in it is good if there are some additions made to it, I cannot vote for it as it stands. It reads :

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation."

Does not that compel them to carry them precisely at the same rate per ton per mile on the roads, for instance, from New York to Harrisburg, as they would from that point if they were going to Chicago or the far west? Unquestionably it does. Now, if you were to stop there and incorporate at that point what I think might be added, to my mind it would cure the trouble and not injure the roads and not injure the people; and that would be by inserting after the word "corporation" these words, "taking into consideration the distance of transportation and the character of the road transported over." That would permit railroads to discriminate, as they ought to have a right to discriminate, on account of the distance and the character and condition of the road. Unless that is permitted we may as well pass a provision here that henceforth railroads shall cease to exist in this State.

I appeal to the members of the Convention to consider this question before we pass upon it finally. Is it not as certain as that the sun shines that if you drive away a certain portion of the freight of this great line, in order to live it must increase its fares, it must increase its rates of freights, and they have the right to do so under existing laws now. There is a maximum established to which the road has not yet gone, and the moment you pass this section it will have to abandon this through freight and fall back on the Pennsylvania freight and charge fully up to the maximum allowed them by the statutes under which it was organized, and by that means we crush the interests of the State and thereby crush the interests of the people.

This is a move in the wrong direction. The tendency is to cripple the interests of the people instead of promoting them by merely undertaking to injure a great enterprise like the Pennsylvania or the Reading railroad. It was adopted before, not because it met the approval of the majority of the members of this Convention, but because the delegate from Philadelphia, not here now, combatted the section as long as he could, but finally yielded. I do not know whether it was for the reason that the Reading railroad was not a line carrying through freight to the far west, and therefore not interested; but whether that was the reason or not, whether that was right or wrong so far as that road is concerned, it is a monstrous iniquity as applied to the Pennsylvania railroad. The people of this State are not ready to crush that great enterprise, and, for one, I shall record my vote every time the question is raised here in favor of protecting the interests of that company when it is sought to be stricken down without at all benefiting the interests of the people. I am ready to stand up for the rights of the people, but not at the sacrifice of the great interests of the people in another direction, because they are as much interested in the success of that great railroad to-day as they are in the existence of the State. We would be a miserable, petty, six-penny State to-day if it were not for that great corporation. Men may hoot at corporations until doomsday; the truth is nevertheless apparent to all men and believed by all men that they are in their legitimate sphere a great blessing to all the people of the State, and I, for one, do not propose to shut my eyes to that blessing and run off because a hue and cry has been gotten up here against railroads. Let us do justice though the heavens fall.

MR. BIGLER. Would an amendment be now in order to strike out all after the word "section?"

The PRESIDENT *pro tem.* No, sir. There is an amendment now pending. An amendment to that amendment would be in order.

MR. BIGLER. That is an amendment to perfect the text.

The PRESIDENT *pro tem.* There is an amendment pending to strike out all after the word "thereof" to the end of the section. Another amendment was proposed in the forenoon, but the Chair deemed it his duty to rule it out because

it was not properly an amendment to the amendment.

Mr. BIGLER. The Chair was right upon that ruling; but this is a different proposition. It strikes out all after the word "section." Now, according to all the practice that I have seen, the vote would be taken on the pending question first, because that is a proposition to perfect the text, and then the amendment to supercede the section would be voted on afterwards. I am aware that the amendment offered now would not be voted on first.

The PRESIDENT *pro tem*. If the gentleman's amendment is to the pending amendment the Chair will be compelled to recognize it; but if it is an amendment to the prior part of the section not affected by the amendment, the Chair considers himself bound to rule it out.

Mr. BIGLER. It is a proposition to strike out all the preceding portion of the section. Does the Chair decline to entertain it?

The PRESIDENT *pro tem*. I do.

Mr. CUYLER. I hardly suppose that gentlemen mean to be satirical when they propose amendments to this section, and yet it might almost seem so because it is so incurably and atrociously bad that it is absolutely incapable of being amended. It is founded upon a false principle and therefore the seeds of destruction are planted within it, and it must inevitably perish. It is founded upon an ignoring of the plainest and simplest and most elementary laws of trade. Therefore we may write it in our Constitution as much as we will, we may pass as many acts of Assembly as can be passed to give it strength, but it never can survive because it is founded upon a false principle. It ignores the fact that competition regulates prices at all points where competition can possibly exist. We all practice that in the ordinary duties of life. Every merchant and manufacturer and man of business is accustomed to practice it. It is strange that when he comes to deal with corporate interests he should forget that the same great laws of trade and business apply to the corporations that apply to the individual.

The gentleman who closed the debate this morning before the recess, who is a member of the Committee on Railroads, the delegate at large, (Mr. Campbell,) frankly admitted the difficulty and frankly stated what the remedy was to be. In other words, he frankly said to the Convention, "we will abandon the trade that

is outside of the State of Pennsylvania and confine our transporting corporations to the service of the citizens of the State; we will throw away the business of Chicago, of St. Louis, of all the points in the west, of every other point outside of the State of Pennsylvania." Thus did he frankly avow his sentiments, and I suppose them to be the sentiments of the committee of which he is a member. "We will throw all this away, will confine our transporting corporations by the operations of this section to the business of the citizens of Pennsylvania." Is this House ready for that proposition? In the case of the Pennsylvania railroad alone \$75,000,000 of capital have been invested for the purpose of binding this city and this State to other cities and to other States of this Union, for the purpose of giving to the citizens of this State their fair chance in the competition with the citizens of other States in the great business of the country; and yet we sit here to-day deliberately and confessedly, according to the language of one of the members of this committee, for the purpose of abandoning it all and throwing it away, and going back again to the condition of affairs that existed before these roads established through connections that enabled them to reach other and distant points in other States. In other words, we are to dry up the business of the city of Philadelphia in its relations to the commerce of the country outside of the State of Pennsylvania; by a constitutional provision we are to say that that trade which we could carry through at reduced rates in competition with the cities of New York and Baltimore, we are to abandon and give up altogether. For what result? What is to be achieved? Lower rates to the citizens of Pennsylvania? Not at all, but precisely the reverse; for this invested capital will earn a competent dividend, and if you will not give it a chance to earn some portion of that dividend from that which it carries from beyond the line of the State, it will burden the trade of the State with an increased charge in order that it may earn its fair return for its stockholders. That is the inevitable law of trade and business.

Therefore, Mr. President, following out the thought of the member of the committee to whom I have alluded, we are to dry up the commerce of our own great cities, and in doing that we are to impose an added burden on the commerce of our own State; for, just in proportion as you

are able to earn something from beyond the line of the State where you carry on a competition with other roads, you are doing that much toward a fair return for capital to the stockholders of these corporations and that much in relief of the pressure that otherwise would rest upon those within our State who require transportation.

These are common sense principles; there is no mystery about them; they are the principles upon which every merchant and manufacturer and man of business has been accustomed always to transact his own business; and why shall he ignore these great laws of trade when he comes to deal with this practical question which is before this Convention to-day?

The gentleman alluded to the State of Illinois. It was a most unhappy allusion. We have borrowed this crude and preposterous suggestion from the legislation of that State; but that State to-day suffers by reason of it under an ill by reason of which she cries out in positive agony. It is indeed true, as the gentleman said, that the people of Illinois have dragged the ermine from the shoulders of a judge who dared to decide honestly and justly and according to his conscience, and the gentleman alluded to that act as if it were an act that should be praised on the part of the people of that State, instead of being condemned. It is true they have done that; but what has followed? That decision of the court has been acquiesced in by the transportation companies of Illinois, and to-day the agricultural population of Illinois find themselves burdened with twice the cost of transportation that they paid before that decision was given. They have had the poisoned chalice commended to their own lips; they are reaping the very thorns that they themselves have planted, and they are finding that that very legislation which is copied into this article, is burdening the trade of the State with twice the charges that it bore before. Nay, more, they find that their own dear city of Chicago is now placed in that position where her trade is in danger of drying up as against the trade of other cities with which before she was able to compete. Take the case of the city of Quincy, a railroad centre within the State of Illinois. The Chicago and Burlington road carried a large freight from that point to the city of Chicago until the adoption of this provision.

Now, the Chicago and Burlington road cannot afford to carry that trade, and the city of Chicago is cut off from it as she is from trade from other points. It goes to and builds up the rival city of St. Louis. And so it is, I say, that it is God's own good providence that this Convention has not come to consider this article until it has before it the sad experience of the people of Illinois to demonstrate the unreason and folly and absurdity of these propositions. I hope, therefore, that not only will this particular amendment prevail, whereby the latter part of this section will be cut off, but I hope that the whole section will be voted down. This is a late day in the history of this country for us to begin to dwarf our railroads to mere State institutions. All our legislation, all our history, all our experience, demonstrates that the tendency of the American people is to disburden these roads from the charges they have been placed upon them and to enable them to grow and expand, to reach beyond State lines even to the remotest boundary of the country. And yet we are proposing to-day to enact a constitutional provision that will carry us back to the very beginning of railroad life and exclude and ignore all the experience of the last quarter of a century.

MR. W. H. SMITH. I would ask what is the question?

THE PRESIDENT *pro tem*. The amendment is to strike out all after the word "thereof."

MR. W. H. SMITH. Would it be in order to forward another amendment to that?

THE PRESIDENT *pro tem*. That would depend upon what the amendment is.

MR. W. H. SMITH. I desire to strike out some parts of the section, from the word "thereof" down to the word "distance" in the tenth line, leaving in the words: "And no special rates or drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore and reasonable extra rates within the limits of the charter may be made."

I would strike out all after the word "made," which will retain what I have read, and then after the word "drawbacks" I would insert "on freights or passengers." Then the section will read in this wise:

"No corporation engaged in the transportation of freight or passengers shall

make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and no special rates or drawbacks on freights or passengers shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made."

The PRESIDENT *pro tem.* The Chair cannot entertain that amendment. It proposes to amend in part what the delegate from the city proposes to strike out, and it is hardly an amendment to the amendment.

Mr. WILLIAM H. SMITH. If that is the case I shall say a few words. I shall vote for this section as it stands, but I would much rather it were so amended as I have proposed. I will also vote for the amendment of the gentleman from Philadelphia, and if the amendment does not carry I shall then vote for the section. I would vote for it more cheerfully if I could see or feel or believe that the framers of it knew exactly the effect of what this section will be on the railroad interest, and upon the interest of everybody outside of the railroad interest. I do not think that we can measure the effect of this section. Besides, I think that it is rather too complicated to be carried out under any circumstances. I am convinced and believe that something must be done in connection with this proposition, and as a general rule I will always go for the report of a committee which has been elaborated, no doubt industriously and honestly and faithfully, to remedy the ills we have been sent to cure; but I still think that to cut this section down as I have proposed would be better.

Now, in regard to these discriminations this section says that there shall not be "any discrimination in charges for the carriage of either freight or passengers," and that "the charges for freight and fares for passengers shall, for equal distances in the same direction, be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance." I do not know, but it seems to me it would be impossible to carry that principle out.

We hear, first, that the people in the interior of the State, whether the freights are carried to Pittsburg or Philadelphia, are complaining of the rates for short distances, and we have been told by the delegate at large from Philadelphia, (Mr.

Campbell,) that there is imminent danger that the people will rise in their might and fix the rates to suit themselves over all the railroads of the State if they do not get rates to suit them. And while we here in Pennsylvania are complaining about the rates for short distances, it appears that the people of Illinois have raised a sort of rebellion and have stripped the ermine from a judge because he did not decide as they wished, while they are contending against excessive rates for long distances.

Now, there is something difficult to reconcile in this. To me it is a perplexing question. I do not pretend to say that I have any view about it that is worth much, but I can see this great inconsistency and this great trouble, that while the people here are complaining, and justly complaining, no doubt, about the rates of freight for short distances, the people of Illinois are deeply agitated and making almost a revolution against the rates of freight for the longest distances possible. I only mention this to show how perplexing the question is, and the impossibility there is for us to treat it here to the extent and in the varied detail that is attempted in this article.

Now, in regard to the discriminations, this section says:

"And no special rates or drawbacks shall, either directly or indirectly, be allowed, but commutation tickets to passengers may be issued."

Commutation tickets are now issued at both ends of the Pennsylvania railroad's main line, from Pittsburg eastward and westward on the Fort Wayne road, and eastward from Philadelphia, sometimes at one cent a mile and sometimes at one and a half cents, within twenty miles, while passage from here to Pittsburg is three cents a mile. I do not know how that is to be arranged or whether it is intended to make the railroads charge three cents a mile everywhere. I do not think there is any complaint about the disparity on the part of the people who live in or near the cities, but they would surely complain if they had to pay three cents where they now pay *one cent* a mile. There may be some complaint about the prices charged for passage from here to Pittsburg, but three cents a mile would surely be thought too much when you have to travel from your home to your business, some twenty miles apart.

But this is going much further than I supposed I would. I do not know how

this subject is to be disposed of. I do not believe it is to be settled by this article, as I have before stated; nor that it is the best that can be done. And yet because there has been an effort, and a just and proper effort, to relieve the State from the usurpations or attempted usurpations of railroad corporations, I shall go for this section.

Mr. M'MURRAY. Mr. President: I desire to say but a word on this section, and for this reason: I think a construction has been put upon it here by delegates that the section will not in any fair manner bear; first by the delegate from Philadelphia (Mr. J. Price Wetherill) and then by the delegate at large from Somerset (Mr. Baer.) They both insist that under this section railroad companies would be compelled to charge a certain rate per ton per mile for carrying freights. Now, it appears to me that the section cannot receive any such construction. The reading of it is plain, so plain that any man who can read and understand the English language can read and understand it:

"The charges for freight and fares for passengers shall, for equal distances in the same direction, be the same."

What does that mean? What would any common man understand by that? Simply this: That if I have a ton of freight to carry from Philadelphia to Harrisburg, one hundred and five miles, the railroad company shall not charge me a higher rate for carrying that freight in that direction west than it would charge another man for carrying a ton of freight one hundred and five miles on the west end of the road in the same direction. That is all it means, nothing more. They shall not charge me more for carrying that ton of freight that hundred and five miles on the east end of the road going west than another man for carrying a ton of freight on the same road any given hundred miles at any place on the road. There is nothing about rate per mile in the section. It simply means that if I am a passenger riding on that road from Altoona to Pittsburg, going west, they shall not charge me more for that distance than they would another man riding from Philadelphia an equal distance on the same road, going in the same direction, and so coming east. This is all that the section means; and this other construction has been put upon it here by those who are opposed to the section, in order to mislead delegates. It certainly

does not bear the construction, and I venture to say there is not a lawyer in this Convention, if he were sitting on the bench as a judge, who would dare to put such a construction on this section as these gentlemen put upon it. Sir, I insist that this matter shall be treated fairly; let this question stand or fall on its merits, but do not let any delegates get up here and attempt by a false construction to mislead delegates and get them to vote otherwiser than they would on the real merits of the question.

Mr. HOWARD. The delegates in this Convention I have no doubt understand tolerably well by this time that there is a difference of opinion between the people of Illinois and the railroads in that State; and they understand perfectly well that that difference is a pretty lively one. We understand another thing: that since the people have taken the matter in hand, the railroads will embarrass them all they can. We know that they will badger them in every possible way. If they can get over the law, if they can evade the law, if they can possibly raise their rates, if they can do anything to embarrass those people and war upon them so as to get them back in the old channel, they will do it; and there is no question that here in Pennsylvania the same state of circumstances surrounds us and has been growing for years that brought the people of Illinois into their present position of antagonism to the railroads of that State.

I do not suppose that the intelligent delegates of this Convention are going to be frightened by the Roorbach stories that are retailed in this Convention, and by whom? It would be supposed that if this legislation on the part of the people had been so disastrous to the people, the friends of the people would have been concerned, they would have cried out against this great mistake made against their true interests; but, no, it all comes from gentlemen situated like my distinguished friend, the gentleman from Philadelphia, (Mr. Cuyler,) and it comes from other men whom we know by their votes and speeches to be identified with the railroad interest, and against any real reform in favor of the people of the Commonwealth. It is very strange that these gentlemen should have made the discovery that the people of Illinois, in trying to effect a reform, have only cut their own heads off. Now, I believe the people of Illinois are all perfectly square, their heads are level and they are turned in the right direction

and this thunder that has been published through the newspapers about the trouble the people of that State have brought upon themselves, has been in the interest of the railroads and has all been paid for. It is part of the clap-trap and clamor got up to din into the ears of this Convention.

Why, Mr. President, what is there in this section? What is there that, fairly considered, fairly carried out by a railroad company, could possibly work injury to any one? Why, the very fact that it is fair, that it lays down a straightforward and just rule that compels them to do what is right to all men, is the reason why they raise such a clamor and howl against it. This is as fair and straight a proposition as it is possible for men to frame or present. This proposition was considered by the Railroad Committee faithfully and earnestly by sitting nearly every day during a period of over two months. It was considered in the light of all the intelligence and information that they could command; and what is it now? In the first place it provides that no corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof.

Now, what delegate on this floor will say that the principle is not right that they should not be permitted to make any discrimination against the people of this State? That is the rule. We say, "discriminate as much as you choose, but when you do that, you shall not discriminate against that Commonwealth that gave you life and vitality." No, Mr. President, it is not right that they should discriminate against the people of this Commonwealth. We do not say they shall not discriminate. Discriminate, gentlemen, in your judgment just as much as you please. Pile on your discriminations in favor of your outsiders, your men from Ohio, your passengers from Illinois, but when you come into Pennsylvania, treat Pennsylvanians just as fairly as you treat these men from Ohio and their goods. Why, Mr. President, the proposition is so straight and fair that I wonder that any man should question it, and no man would unless his mind was warped by that self interest that never can see anything in its right, proper and just light.

What next follows? "And such corporation shall carry the persons and goods

of the people of this State on as favorable terms as those of other States." Who can object to that? What is there in that that is going to ruin railroads when you require that they carry the people and the goods of Pennsylvania on as favorable terms as they carry the people and the goods of Ohio, Illinois or New Jersey, who come into and pass through Pennsylvania? Is there anything wrong in that that should make delegates hesitate? I cannot see what it is. I can see how the railroad companies, themselves interested and looking at the question through their pockets—and of course they look at it in that light—may make opposition to this proposition which may cut down in some measure their profits; but to men disinterested, as this Convention should be, standing between these corporations and the people of this Commonwealth, there should not be, nay, there cannot be any fair or reasonable objection to this section, but every reason possible in favor of it.

Then what further? It only says that they shall not discriminate against our people, that they shall give us as favorable terms as they give the people of other States. Then what else? "Charges for freight and fares for passengers shall, for equal distances in the same direction, be the same." Why, that is just as fair and as true as in mathematics it is to say that twice one is two. It is just as plain a proposition that they shall charge no more for an equal distance in the same direction to one man than to another. What terrible outrage is that? How can a railroad be injured by such a proposition? It is utterly impossible, and it is only because fairness strikes at wrong and justice strikes at rascality that these railroad representatives whine and howl. A fair and honest proposition meets a storm of opposition. That is the straight truth in regard to it, expressed in plain English, and there is no mistake about it.

Then "that a higher charge shall not be made for a shorter distance than shall be made for a longer." What honest argument can ever be advanced for charging a man for fifty miles more than you charge him for one hundred miles? Yet railroads have been doing that very thing, charging a man actually more for going fifty miles than they do for going one hundred, and compelling men in Pennsylvania that I know to ship their goods away up into the State of Ohio in order to get Ohio rates in reaching the city of

Philadelphia. A system like that is too abominable to be tolerated by any community; and yet such for years has been the case. Goods can be shipped from the city of Pittsburg to-day into the middle of Ohio, shipped to Cleveland and then returned back through the city of Pittsburg over the Pennsylvania railroad and brought to the seaboard for less money than they can be shipped from Pittsburg to Philadelphia, and men that were engaged in the manufacturing business in the city of Pittsburg, largely engaged in the manufacture of horse shoes and who had spent large sums of money to erect valuable machinery for that purpose, in order to supply horse shoes to the western market, were broken down and driven out of business by an establishment in Troy, in the State of New York, whose goods were carried directly through the city of Pittsburg at a rate less than was charged the Pittsburg men. Was that honest toward the business men of Pittsburg? No, sir. It was nothing but sheer rascality. I do not blame the stockholders. The stockholders knew nothing about it. It was the executive officers of that road that were interested in the other establishment that crushed out the Pittsburg people just as they crushed out parties in the west who were interested in the coal fields of Westmoreland county and who did not have connection with the officers' ring in the Pennsylvania railroad company.

MR. ROOKE. It is with reluctance that I rise to say anything to this Convention, but I suppose I feel as much interest on this subject as any member of the Convention. I was a member of the committee that reported this article on railroads, and while there are a great many sections that meet my approbation, and that I think will be an advantage to the State, there have been some very injurious sections reported, that will interfere with its interests, and among those sections, as I have said to that committee, and I say here now, the one which I believe, above all others, will do the greatest harm to the interests of the State is the very section now under consideration. This is a section that I think is calculated so do great harm, both to the railroad companies and to the business men of the State. It will do an injury to everybody who has to buy flour or grain, or depend upon the cheap products of the west, because if this section be adopted its immediate effect will be to

prevent our railroad companies from competing for the western trade, a trade that is very necessary to the people of this Commonwealth.

It will go still further. It will prevent the railroad companies at home from competing against one another. If I were able to present my views upon this subject so as to be intelligently understood by this Convention, I have no doubt that this section would be voted down. I will give the reasons why I believe this is true. As I said before, it will destroy the competition between the railroads of this State, and I will illustrate it in this way: Suppose a railroad company carrying coal from Pottsville to the city of Philadelphia was to carry coal at one cent per ton per mile—which is about as low as it could be carried—the Lehigh Valley road carrying coal from Wilkesbarre, double the distance, would have to carry it for one-half cent per ton per mile, one-half what the other road would carry it for, and of course they could not afford to do that and pay a profit to their stockholders. The result of it would be that they could not deliver coal to the city of Philadelphia, as this section would compel them to deliver to all local points at the same rates, and that city would have to depend upon the short route. Therefore it must be very evident that this would destroy competition and that the short roads would do all the carrying between the different cities.

There has been great complaint in the State that the railroad companies have acted unfairly with our manufacturers by carrying freights for citizens of other States at less rates than they have carried for our own citizens. If they have carried freights at less rates then they can afford to be carried, I no not see that we have any right to complain. The question with us is not whether they have charged others too little, but whether they have charged us too much. I have been in business for twenty years, and my experience has been that instead of our railroad companies making unjust discriminations against us in rates, the railroads that have grown up around us have gradually been reducing the rates of freight. They used to charge us two and one-fourth and two and one-half cents per ton per mile for shipping iron, and they have reduced that until this year the average rate is one and three-tenths cents per ton per mile on the Pennsylvania railroad and one and four-tenths on

the Philadelphia and Erie railroad. They carry on the Philadelphia and Erie railroad at this price because they have to compete with the New York and Erie railroad, and they really carry at less rates than they can afford if they mean to pay any dividend to the stockholders of the road. They would not do it if they were not compelled to do it, for there is not enough custom along the line of the railroad to keep it up, and consequently they have to carry for what they can get, in order to pay interest on their investment and to keep up the business of the road as nearly to a prosperous condition as possible.

This section would deprive such railroad companies of the chance of picking up outside freights, thereby making money and assisting to reduce the freights here. The consequence would be that they would increase the freights on us. They would have to do so because they only derive one fourth of their profits from outside freights, and if they could not get these outside freights in this way, and be thus benefited by these privileges, they would have to put the rates of freight up to three or three and a half cents per ton per mile, as their charter allows, whereas they now only charge one and three tenths, as I said before.

It would be just as reasonable for this Convention to put in a constitutional provision saying that a manufacturer shall not sell his surplus outside of the State for less than he sells to home consumers. This is a discrimination against the citizens of this State. It is notorious that manufacturers, when they produce more than the home trade can consume, ship the surplus to outside parties and sell it for what they can get. If we were to prevent that privilege and put a constitutional provision of that kind into this instrument, how many manufacturers in the State could subsist for any length of time? It would be as reasonable to put a constitutional provision of that kind here as to say that a grocer shall sell to a customer who buys by the ton for no less rate than to a customer who buys by the pound. No grocer could live and do a business of that kind very long; and railroad companies could not live if they are to be affected by provisions of this kind.

I am not supporting railroad companies, but I know what they have done for this State, and I know what provisions are necessary to allow them to attend to the proper management of their business,

and I say that they must be allowed to make these discriminations. I feel reluctant to speak of that, because I am interested. The railroad companies that carry coal from our anthracite coal fields to western Pennsylvania, to Erie and the northern part of New York, have cars returning without any freight, and they say to the manufacturers, and have said to the iron manufacturers in our country, "if you will take the iron ore that is being developed in New York, we will carry that back to you at three-fourths of a cent per ton per mile." And very many of our manufacturers allow them to do it. Is not that a discrimination? They carry their freights outward from our country for one and one-half cents per ton per mile, and carry freights inward at three-fourths of a cent per ton per mile—less than they can afford—less than it has been shown by the gentleman from Philadelphia that they can afford to do it at, but they accept this freight at this low rate because otherwise they could get none and would be compelled to bring their cars home empty. This is a discrimination, but not against the people of Pennsylvania, for the people of Pennsylvania are benefited by it, and we must allow such discriminations as these. We must allow the railroad companies to charge a higher rate of freight for shorter distances than for longer distances, and I will tell you why.

They at times do not have on a line of road near me sufficient to keep their cars constantly occupied. They then will hold out inducements to iron men: "If you will ship iron to Elmira we will carry it for you for a cent and a quarter a ton a mile." We know they cannot realize great profit from it because the New York roads in carrying iron from the Lehigh district take it at very low prices, and we say, "If you will do it at a certain price, we will send it, and they deliver our iron in the Elmira market for a little over a dollar and a half a ton, one hundred and forty miles, whereas they charge us from our place to Lockhaven, which is only about seventy miles, two dollars a ton. I do not think that unreasonable; but that is more for a shorter distance than a longer distance; and the manufacturers of Pennsylvania are benefited by just such a course as that. If this Convention put in the Constitution a provision of that kind, they not only injure but destroy them. I should not like this Convention, in its blind zeal to restrain

railroad companies, destroy the interests of this State.

I know that a great many people in looking at this proposition think it so infinitely fair that they are inclined to vote for it. They do not study the effects it is likely to have on the business interests of the State. The gentleman from Allegheny (Mr. Howard) says it is evidently fair that all should be charged alike, and I know he is inclined to vote for it; but I think I have shown, practically, how improper and unjust it is.

It was with great hesitancy that I got up to make this imperfect statement; but you will excuse me, gentlemen, because it is the first time I ever attempted to say anything in public.

In the latter part of the section it says there shall not be any drawbacks made. I have never seen any injury done to the interests of this State by drawbacks. I have been interested in drawbacks. I have never been profited by them, but the only drawbacks I ever knew to happen were in this way: The company would say to a miner, when I was in that business, "you mine fifty thousand tons of coal this year; if you increase the product from your mine to one hundred thousand tons, we will give you drawbacks." It is an inducement to encourage men to do more business; and the people of the State are benefited by that encouragement. They have given a drawback of ten cents for doing this. Is anybody injured by such drawback?

Mr. BROOMALL. Mr. President: I desire to add a word or two to what has been so well said by the gentleman from Union, and that is this: It seems to me there are so many cases in which it is right and proper for railroads to make discriminations in freights, that we had better leave this whole matter to the laws of trade under what legislation may be seen necessary.

I will mention one instance. Some of the railroads in the vicinity of Philadelphia, and probably all of them, offer inducements to persons to locate themselves and their business along the line of those roads, somewhat in this way: They will propose to carry the building materials and all freights for the business for a given length of time at half or quarter rates, if the individual will locate along their line. Now, I want to know whether there is any harm in that. I want to know whether that is not perfectly legitimate and proper, and I want to know

whether we ought to put a provision in the Constitution that shall prevent that.

I know that there may be discriminations made that are evil; but I take it that the most of the discriminations are of the character that I mentioned, those that are to the advantage of the stockholders and to the advantage of the community in which the railroad is, where the discriminations are made in favor of a business that is to be built up, and with a view to the building up of business. And shall the West Chester railroad, for example, be told a year hence, when it desires to locate some Philadelphia gentleman at Media, that it would take his building materials at half rates only that it is no longer constitutional? What a spectacle we shall present to forbid a railroad company from fostering the business along its line by discriminations that are innocent and to the advantage of the party in whose favor the discrimination is made.

I say we cannot prohibit railroads from making discrimination without doing more damage in a dozen directions than we do good in some one or two in which evils exist, and I trust the whole section will be voted down.

Mr. J. M. BAILEY. Mr. President: It seems to me quite strange that there should be so much opposition to this section. The first part of it only prohibits carrying corporations from making discriminations in their rates of transportation of freight and passengers in favor of people of other States and against our own. This is certainly reasonable, and why any delegate in this Convention should find fault with it I cannot comprehend. The necessity which requires the incorporation into the organic law of such a just proposition is, I admit, to be regretted; but no business man in the Commonwealth can shut his eyes to the fact that such a necessity does exist. Day after day the great powers and franchises granted by this State to the railroads are used to the injury of her manufacturing and producing interests. Why should this be so? It is said that "corporations have no souls" and of course cannot be grateful, but they should at least be just; and if it requires the restraining power of a constitutional provision to make them deal justly with our people, let us have it. Why, the unjust and unfair discrimination against the people of the Commonwealth that breathed life into these corporations; that parted with some of their own rights

that these railroads might live; that nursed them by liberal legislation, granting to them great powers when they were young and weak, is, I confess, sir, beyond comprehension, and contrary even to the laws of common gratitude. Mr. President, the principal argument urged here against this section is that railroads cannot charge as much for shipping the freights of foreign States as our own, because there is competition for that business, and if they charged higher rates than they now do, this business would be diverted to other lines. This may all be true, sir, but it proves nothing and should weigh nothing in the consideration of this section, for it is not alleged that at the rates they ship this foreign freight, they do not make large profits. The contrary, sir, is true. The annual reports of the Pennsylvania railroad company show that on these through freights they make a very large profit. Now, sir, will any gentleman of this Convention give me any good reason why the railroad corporations should not be obliged to ship the products and manufactures of Pennsylvania at the same rate at least as they do those of Ohio and Illinois, showing that they make large profits on them. But if it should be alleged that they make nothing on the shipment of these foreign freights, then why carry them at such rates? Why should they be permitted to oblige the people of Pennsylvania who ship the local freights to pay such rates that the freight of the other States can be carried for nothing?

The other part of this section is intended to prevent carrying companies from charging more for shipping the same class of freight a shorter distance than a longer one. I would like any gentleman of this Convention to inform me why there should be any objection to a proposition so manifestly fair as this? I cannot imagine, sir, what course of reasoning can possibly lead any man to the conclusion that it is right for a railroad company to charge *more* for shipping the same class of freight one hundred miles than for three hundred miles. Strange to say, sir, we have gentlemen in this Convention who contend that such discrimination is all right and proper.

It is seriously contended here, sir—for the effect of the argument is such—that a manufacturer or producer within one hundred miles of the market should pay *larger* freight for the transportation of his goods to market than he who lives three

hundred miles away. And such a system of charging we are very nicely told by the gentleman from Union (Mr. Rooke) is to the great advantage of our manufacturers. Good business men usually make it an object in the selection of property for manufacturing purposes, to get near the market, but such a system as is contended for reverses this well settled rule, and I suppose in the future we may expect to find business men trying to get as far from the market as possible. Some gentlemen who have been opposing this section have talked to us very fluently about the “natural laws of trade,” but it strikes me, sir, that the system of charging freight on our railroads which it is contended the laws of trade demand, is not very “natural.”

This section is very liberal to the corporations, and I am greatly surprised that they oppose it so vigorously. For my part I should be willing to go further even than the section, and prohibit carrying companies from charging *as much* for a longer distance as for a shorter one, excepting, however, from that rule freights carried for a shorter distance than say fifty miles. I admit that they ought to be allowed to charge a greater rate per mile for a quite short distance than a longer one. The reasons are quite obvious. A mention of a few of the instances of oppression which the people of my district have suffered from unfair discrimination by railroad corporations in this matter would, perhaps, be interesting to the Convention.

In the town of Bellefonte, the home of my distinguished friend, Governor Curtin, who is now a delegate upon this floor, an establishment was erected a few years ago for the manufacture of glass; the competition was principally in the city of Pittsburg; now mark it, the railroad company charged more per hundred for shipping the soda-ash, which is largely used in the manufacture of glass, from Philadelphia to Bellefonte than to Pittsburg, which is nearly one hundred miles further. I have been told by a responsible gentleman, resident in Bellefonte, that the railroad corporations actually charged them thirty cents per hundred for shipping soda-ash to Bellefonte, while at the same time they were shipping the same article to their competitors at Pittsburg for sixteen cents per hundred. We are told by the gentleman from Union (Mr. Rooke) that such a system of charging is greatly to the interests of our man-

ufacturers. Perhaps it may have been to those in Pittsburg, but I am unable to see how it was of very great advantage to those in Bellefonte. It is indeed a strange reasoning that leads to the conclusion at which my friend has arrived.

Again, Mr. President, on account of the scarcity of wheat last season it became necessary for some of our manufacturers of flour at Huntingdon to buy wheat in the State of Illinois and have it shipped east. Would you believe it, sir, that the railroad company refused these manufacturers the privilege of paying the same amount of freight on a car of that wheat to Huntingdon that they were charging to Philadelphia—more than two hundred miles further—and have the cars dropped out of the train at Huntingdon—for they had to pass through Huntingdon to reach this city. They did refuse this privilege and actually charged from forty to fifty dollars a car more for shipping the wheat to Huntingdon than they were charging at the same time to ship it to Philadelphia. And still we are seriously asked to believe that such discriminations hurt nobody and are of great advantage to everybody.

I have another instance, Mr. President. The bituminous coal mined in the county of Huntingdon and adjoining counties has its chief competitor in the coal mined at Cumberland, Maryland. Since the construction of the Bedford and Bridgeport railroad, a great amount of the Cumberland coal is transported to market right through the Broad Top coal field in Huntingdon county, and is about eighty miles further from market than our coal, and yet the carrying corporations actually charged eight cents per ton less for shipping the Cumberland coal than they shipped the Huntingdon coal for, although they had to carry it eighty miles further and close by the mouths of the Huntingdon mines.

Delegates may talk about the "natural laws of trade," but it is hard to make the people of Pennsylvania believe that such a system of charging freights is to their advantage.

Mr. President, is it any wonder that the people who have sent me here have an abiding interest in this subject? The district which I in part immediately represent here is traversed many miles by the Pennsylvania railroad and its branches, and I can say for my people that they are proud of the greatness and magnificence

of the great corporation that controls them. As Pennsylvanians they have a State pride in their great Pennsylvania railroad. Its achievement in developing our Commonwealth's internal power and in bringing to light her immense resources have created in their minds a grateful respect.

It may be said, as it has been said, that this matter is peculiarly appropriate to the functions of the Legislature. I admit the force of this, but the people have year after year asked their legislators at Harrisburg for some relief in this matter and have received none; judging from the motives that usually influence most of our law-givers, it is not hard to guess the reason that no relief has come. What astringents have from time to time been applied to the Legislature that has prevented the flowing out to the people of this simple act of justice is, of course, to us a mere matter of speculation, but rumor upon this point is not uncertain. The people have often asked the Legislature for relief and been so often refused that they will consent to nothing from this Convention that does not bring them substantial relief. It cannot longer be doubted, sir, that there is evil existing in the present system of freight charges, and it must be remedied speedily and effectually. The people look to this Convention with great hope and confidence. Shall they be disappointed? We shall see.

Mr. President, I think the railroads will make a great mistake if they do not cheerfully accord to the spirit of this section, or they might "go further and fare worse." It is not possible for them much longer to outrage public sentiment and public rights with impunity. Great and powerful as the corporations of this State have become, they could not for a single day brave public indignation when aroused to such a degree that it will feel obliged to assert by force the rights that it should have had by peaceful means. Will our railroad corporations not heed the lesson taught to those of Illinois? Will they not take the hint that there is a point beyond which the forbearance of the people even of Pennsylvania, with their steady and conservative habits, cannot go? Will they refuse this small measure of relief until an outraged people shall rise in their terrible might and power and, with their hands at the throats of these gigantic and soulless corporations, force from them the rights they know to be theirs. And that will be a sad day for

the Commonwealth as well as the railroads.

MR. CURTIN. I desire to say a few words on this subject. I occupied the same position when in the committee as the gentleman from Union, (Mr. Rooke,) and since am fully in accord with what he said. While I agree that there is very much in the report of the committee that is good and will prove beneficent in the future of the State, there is much of it that I do not approve, and especially this section.

MR. President, we have more railroads than any country in the world; in fact, we have nearly as many miles of railroad in the United States as all the rest of the world. I believe we have fifty-seven thousand miles of railroad, and we are building at the rate of about eight thousand miles a year. We have large amounts of capital invested in those roads. Then it is a fact that we carry passengers and tonnage cheaper than any country in the world. Our maximum rate is three cents per mile per ton, and there is no country in Europe that carries for less than four cents per mile. With all their advantage of full population and age, and cheap labor and abundant capital, we have the most perfect system of railroads in the world.

But, says my intelligent colleague who has just taken his seat. (Mr. J. M. Bailey,) the railroads must be restrained; that is, one railroad; for it is not unjust to say that the usual amenities of this Convention and the pleasant parliamentary proprieties with which all our debates have been conducted heretofore, seem to have been forgotten, and instead of the courtesies which usually prevail, we have asperities and language in this discussion heretofore unknown to this Convention. "Scoundrel" and "thief" and "robber" are common terms. That is polite language now. "Rascality" has grown into a classic term in this Convention; and God knows what kind of language we will come to next. [Laughter.]

Now, Mr. President, as I was about to say, my intelligent colleague says there must be some restraint on the charges of railroads, or there will be commotions, violent physical commotions; that is, that the railroads shall be compelled to carry a barrel of flour or a car load of freight of any kind from the town of Huntingdon to Hollidaysburg at the same rate per mile that they carry a barrel of flour or a

car load of tonnage from Chicago to Philadelphia, or from the town of Huntingdon to Philadelphia, as from Chicago to Philadelphia.

MR. J. M. BAILEY. I did not say so. said the railroad companies should not be permitted to charge more from Huntingdon to Hollidaysburg than they charge from Huntingdon to Chicago.

MR. CURTIN. I understand that perfectly. The gentleman and myself will not call any of those hard names; we will not fall into that indiscretion in this Convention.

MR. J. M. BAILEY. I do not think I used any hard names.

MR. CURTIN. That is true. Now, sir, my colleague and many gentlemen of this Convention strike at one railroad, and they say that railroad shall carry freight at the same rate per mile from Pittsburg, which has suffered dreadfully, or from Huntingdon, which has suffered a little, as they carry it from Chicago. The Pennsylvania railroad company have what the lawyers call vested right. They made their bargain with the State when they obtained their franchises. Their bargain was that they should take part of the property of the people of the State under the right of eminent domain for which they should pay, that they should carry passengers and tonnage at given rates, and it was fixed in the bargain that they should carry tonnage at the rate of three and a-half cents per mile. When the tonnage tax was commuted in 1861, that half-cent was taken off, and the agreement remained, the covenant between the railroad and the people of the State that they should carry at three cents per ton per mile. That is the maximum rate. It is not pretended that the Pennsylvania railroad company charges up to the maximum. On the contrary, they charge only about one and a-half or one and three-fourth cents per mile. Now, suppose they do choose to charge the farmer or the merchant of Illinois less than three cents per ton per mile for long distances, or less than one and three-fourths cents per mile; I do not know that we can interfere with that arrangement. At all events they are under the maximum, and so long as they keep their bargain we cannot interfere. But if you declare that they shall not carry the tonnage of the West at a less rate than they carry Pennsylvania freight, and you could enforce such a declaration, you would exclude the tonnage coming from the West and force it

into the competing lines north and south of us, and the Pennsylvania company would be compelled to put up their rates to the maximum. Then who suffers? You have aimed a heavy blow at the Pennsylvania railroad, but you missed the breast of the railroad, and it falls on the people who produce and travel on the works of that company. That is an illustration made by my friend, Dr. Rooke, who was on the committee.

My colleague from Huntingdon will understand that you cannot change the bargain; they can charge three cents per ton per mile, and if they choose to carry for less than three cents per ton per mile in grappling with competing lines of other States for the trade of the west, and in drawing it to this city, where the money was furnished to build this great artery of trade, the product of the field and the mine of the west for less than that, rather than it should go to New York or Baltimore, and carry it at a less rate than they made a bargain with the State they should have from our people, who has a right to complain? If it enriches our State and affords to our people facilities in trade and travel, if scarcity of breadstuffs requires us as our manufacturing interests multiply to go to the west to get them, who will complain that in getting our bread and our beef from the great valley of the Mississippi we pay low freights to get it here, while the railroad that carries it is entirely within the terms of the covenant made with the State at the time of its creation?

Without speaking of the tyranny of railroads, or, in the language of the enlightened and eloquent gentleman from Franklin, (Mr. Sharpe,) of the majestic and imperious tread of the Pennsylvania railroad company, without any affinities or connection with it, I do think that when we attempt to cripple that company and bind it hand and foot we give them an opportunity of increasing their rates, and the manacles with which we expect to bind this corporation fall upon the arms and the ankles of the people, and of the State, and instead of being beneficent in our action we are passing entirely outside of the domain and limits prescribed for a Constitutional Convention and legislating for the public. We should be careful that we do not so legislate as to cripple trade and commerce and destroy the interests we should foster and protect in attempting to cripple the interests with

which we seem to be at war, that we do not fail, and fail signally in all such vain efforts that are controlled by the laws of trade and commerce as certainly as the rain which falls upon the mountain will find its way to the sea by the course of the rivers.

Mr. COCHRAN. Mr. President: There is no question which has been brought before this body in which from the means of information that I possess—

The PRESIDENT *pro tem*. Will the gentleman state that he has not spoken on this question?

Mr. COCHRAN. Yes, sir; I shall state that because I have not done it.

The PRESIDENT *pro tem*. The Chair cannot always keep the run of those who have spoken, and did not know how the fact was. The gentleman will proceed.

Mr. COCHRAN. I say, Mr. President, that there is no question which has been brought before this body in which there is so deep an interest entertained by the people of this Commonwealth as that which is included within the four corners of this section. There is more popular interest involved in it, and the people of this State believe that there is more of their substantial welfare and their rights involved in it, than there is in any other subject which has been presented to our consideration. I have heard nothing with regard to our proceedings which in any degree approaches that which I have heard on this question. This subject cannot be safely glossed over, nor can this section, in my apprehension, be wisely and judiciously either negated or made of no effect by striking out its substantial and efficient provisions. I have heard no gentleman rise here, from the practical gentleman from Philadelphia who was not afraid of hydras, through all the others who have discussed this question, who have denied the apparent equity and justice of the contents of this section. It is impossible to deny that the equality which is intended to be brought about by the enforcement of this section is the equity which is the highest duty which we owe to the people whom we represent.

But it is said that this section must be negated, it must be stricken out of this article because it was against the everlasting laws of trade, and matters of that sort. Mr. President, if there is any law on the face of the earth that works such injustice as has been portrayed here and as we know has been wrought in this Commonwealth through this unjust dis-

crimination against the people of our State, then that law of trade ought no longer to exist and we ought to pay no regard to it.

The gentleman from Centre who has just taken his seat (Mr. Curtin) has undertaken to tell us about the great rights of the Pennsylvania railroad company which they have derived from the State, that they have the right to charge three cents per ton per mile, and that they do not charge their maximum rate and therefore do us no wrong. Sir, I submit that within the limits of the maximum you can do as much gross injustice to the people by discriminating against them as you can do by raising your prices up to the maximum and putting them on an equality. If you place your charge for one man at two cents a ton per mile and for another man at one cent per ton per mile, you do him as gross injustice as it is possible for you to do; by charging up to your maximum, you do him as great a wrong, you prostrate and destroy his business, and you interfere with his rights and his prosperity.

Sir, it is said that if we dare to pass this section, then the Pennsylvania railroad company will undertake to raise its freights up to its maximum of three cents a mile, and in that way it will take its revenge, I suppose, upon the people of this Commonwealth for inserting a section of this kind into their fundamental law. Why, sir, we have (and it has already been referred to) some experience of that kind, I admit, in the State of Illinois. Because the people of that State chose to adopt a certain policy which they believed was essential to their rights and their welfare, then it was that the railroad companies chose by arranging new toll-sheets and raising the price of transportation on their roads, to inflict upon them a penalty and a punishment for their audacity in interfering with their assumptions. Sir, if that is the issue, it is to become a question of endurance and of power between the people and the creatures whom they have made; it is a question in whose hands shall be the mastery. Sir, I deprecate such an issue, and I do not believe for one moment the passage of a section of this kind is going to be attended with any such consequences or fraught with any such evils as the gentleman from Centre predicted in his speech.

Mr. President, this section, in the first place, claims that the people of Pennsyl-

vania should receive at least equal favors from their incorporated bodies as the people of other States. But, it is said that this destroys the law of trade, that you must, in order to get trade from other States, make a discrimination in their favor and against the people of this Commonwealth. Why, sir, how is it? Do the railroad companies of this State carry through this State at a profit? Have they a profit from bringing goods through this Commonwealth? Then if they make a profit why can they not carry for the people of this State and be content with the same profit that they derive from the people of other States? Do they carry at a loss merely for the sake of carrying the property? Then shall the people of this State be required to come forward and make up that loss out of their pockets which they sustain in consequence of this disastrous policy which they have adopted?

I apprehend that the first clauses of this section are entirely right, entirely proper, and entirely just. But, sir, this matter has been argued as if we were fixing an iron, inflexible law of a rate per ton per mile. When this section was reported from the Committee on Railroads there was, I admit, a provision of that kind in it; but that section was stricken out on my motion in the committee of the whole. I do not believe in applying any such law as that. But this section relates to aggregates and not to details. It does not go into the rate per ton per mile; it goes into the aggregate charge made for transportation. What is the principle of it? Why, sir, if men who ride the same distance on a railroad or have their goods transported the same distance in the same direction on a railroad, will you say it is right to charge one man double and the other man half? Is that equity? Is that the kind of discrimination which you wish to allow to be practiced? That is the whole of it, that where men travel equal distances in the same direction or goods are transported equal distances in the same direction, there shall be equal charges.

Then, further, that there shall not be more charged for transporting a shorter than a longer distance. Why, sir, what is more liberal than that? You shall not charge a man more for transporting his property from here to Lancaster than you shall for transporting it from here to Pittsburg. That is a very poor boon to the man who lives in Lancaster; and yet

that is the only restriction that is contained in that part of the section! You can actually, under this section, charge a man in that way as much for going to Lancaster as to Pittsburg, as the section is drawn; that is, you shall not charge him more for transporting him the shorter than the longer distance. Unfortunately the fact is that charges for shorter distances are often larger under the present policy of this State than they are for the longer distances, and it is to correct that evil merely, to put that moderate restraint upon this policy, that this section was drawn and was presented and is now advocated before this body.

I think that the section is not liable to the objections which have been made against it. I think that in sound policy and in justice this very small boon at least is due to the people of this State. Sir, I do believe that if this be refused by this Convention, or if this is not the exact measure, if some measure of protection is not afforded to the people, the result of it will be eminently disastrous in many respects both upon our work and in the social and business condition of the community.

MR. DUNNING. I do not propose to take up much time, nor shall I attempt to discuss this question at length. I confess my inability to attempt the discussion of it; but I have not failed to listen very attentively for the last two days to the arguments, because I have been anxious to be enlightened upon this very troublesome and vexed question, and I am compelled to say, after having listened to the very able arguments, I find myself involved in just about as much doubt and difficulty as before I heard a word on the subject.

I did feel at the commencement of our labors that this was one of the questions that would trouble this Convention. I felt that it was one that would affect this Commonwealth to a greater extent perhaps than any other question that could possibly be considered. It brings to us the question that of all others most directly affects the development of the resources of this Commonwealth, and of the companies who have been instrumental in the development of those resources. When gentlemen say upon this floor that privileges of a most extraordinary character have been granted to corporations, no man doubts it. But while these privileges have been granted, and companies are operating under them, the

question also comes to us, can we disturb vested rights under these privileges? In listening to the discussion here, it would seem that this Convention, or a portion of it, is making, not an effort to see how they shall best regulate commerce, how they shall best regulate transportation on the railroads of this Commonwealth, but to see how they shall best create an interference with, or if you please a fight upon the corporations that now exist in the State. At the risk of coming under the censure of the gentleman from Allegheny (Mr. Howard) who this morning said that pretty nearly every man who spoke upon this subject had undertaken to give his own record in advance as to what his position had been in reference to railroads, I want to say that I am not here as the representative specially of any railroad or other corporation. I own no stock in any railroad. I live in a county that is interested in railroads, in a county that has been benefited by railroads, and I believe in the doctrine that has been here enunciated, that the State of Pennsylvania has been more benefited by railroad companies in the development of her resources than by any other interest; but I am not willing to stand here and say that this interest, because it has done this, shall have rights that are paramount to all other interests. They should be protected in their rights. These enterprises were projected in an hour when their success was questionable. The gentleman from Franklin (Mr. Sharpe) this morning well stated the question when he said that in 1837-38 the railroad question was new and the experiment untried. When that Convention met it did not know the interests of this Commonwealth as we now see them. It did not know what were the necessities in relation to railroads, or in relation to the laws that should govern them. From a small beginning the railroad interest has grown into the possession of powerful franchises and has invested hundreds of millions of money. If, then, we have fostered these institutions, if we have given them the power to develop the resources of the State, if we have allowed them to construct their roads and to extend and multiply their enterprises and interests, let us now protect them in their legitimate rights; but at the same time do not let us put into the fundamental law anything that will prohibit other individuals from assuming similar positions. If, sir, the railroad corporations

that exist to-day are gigantic and are endangering the interests of citizens or of individual enterprises, and if you now place in this Constitution such restrictions as will prevent other parties from coming into competition with them, if gigantic now they will soon become colossal.

I believe it is utterly impossible for us to make a fixed rate of tolls upon a road that reaches from the city of Philadelphia to the city of Chicago. I believe that the tolls should be placed as nearly on an equality as can be; but if you load a train of cars in Philadelphia to be sent through to Chicago, that train can be carried for a lower rate of freight than a train which will be compelled to stop at ten or twelve different points and unload its cars. There is no doubt about this question at all. Transportation within the State may be proportionally regulated, but through transportation from Commonwealth to Commonwealth cannot be controlled by constitutional provision or by legislative enactment. So far as transportation in the State is concerned make it equal, if you please. You can put it on an equality, but you cannot do it upon longer distances. That is impossible. Will you restrain an individual from charging any price for his labor? A man may labor for any price he chooses if he can get it, but if he chooses to labor for half a dollar less per day than another individual may charge, or the law may contemplate he should receive, you cannot restrain him from doing so, neither can you restrain corporations from charging less if they please to do so. Put them in a position in which they shall not charge more and I will agree with you, but you cannot say that they shall not charge less. They may carry their freights for nothing if they choose from any one point to another on their line, and it would be perfectly legitimate to do so.

As I said at the outset of my remarks, I have been looking for light upon this question and I confess that I have not received a great deal of it. I have listened to a great many arguments, some of them most ingenious, but I have not found anything yet that has convinced me of the propriety of the doctrine found in this section, or that a man, because he holds a position in a railroad company, has not a right to be an independent man in any other respect.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. ANDREW REED. I do not desire to make a speech upon this question, but I do desire to say a few words to explain my position. There are some wrongs with reference to these discriminations in the carriage of freights that should be corrected. I do not, however, think that they can be remedied by the adoption of this section in its present shape. It will inflict greater wrongs, or at least as great, as it is intended to remedy.

My colleague, the gentleman from Huntingdon, (Mr. J. M. Bailey,) has given instances of what I consider are wrongs that should be remedied, and I do not think the answer that was made by the distinguished gentleman from Centre (Governor Curtin) was exactly in point. It is true that railroads cannot carry freight for a short distance at as low a rate as they can for a longer distance, but they should not charge more for a shorter distance than they do for a longer. That is what was meant by my colleague. For instance, to bring a car-load of wheat from the city of Chicago to the town of Huntingdon should not cost more than a car-load of wheat taken upon the same train on the same road to Philadelphia, one hundred and eighty miles further. There is no justice in that.

Part of that section to which I am opposed is this: "And the charges for freight and the fares for passengers shall for equal distances in the same direction be the same." Now, the advocates of this section say that this means that a railroad company shall charge for fifty miles on the same road, going the same way, just what they will charge on another part of the road for another fifty miles. That would not be just. Take the case of a railroad in the county in which I live, for example. It is a railroad of some fifty miles in length, and on one end of that road there is a railroad bridge crossing the Susquehanna river that cost from three hundred thousand to four hundred thousand dollars to construct, more than it cost to build twenty miles, perhaps, of the balance of the road. Persons living on the banks of that river, if they are to have their goods transported simply over that bridge upon the same rate per ton per mile that is charged to others at the other end of the line, would have an unfair discrimination made in their favor. That would be certainly unfair and unjust, and for that reason I cannot support that part of this section.

Further, the section says: "And a higher charge shall never be made for a shorter distance than is made for a longer distance." The same objection would apply to that which applies to the other, though not to so great a degree. When I have the opportunity I shall move to amend the section by striking out the words "and the charges for freight and fares for passengers shall, for equal distances in the same direction, be the same," and insert, after the word "charge," the words "for freight, or higher fare for passengers." Then also after the word "distance," in the tenth line, to insert the words "including such shorter distance," which will make the section read that a railroad company shall not charge more for a longer distance, going over the same road, "including such shorter distance," than they do for such shorter distance. This will cure the evil to which my colleague refers. That is, they cannot charge more for bringing a car load of wheat from Chicago to the town of Huntingdon than they would for bringing the same to the city of Philadelphia, one hundred and eighty miles further upon the same road. That, I think, is just. I think there are cases where I can see that a railroad might perhaps bring freight further at a less expense to them than for a shorter distance. Still I think that so far railroads might be willing to go. But anything further than that I would not be willing to consent to.

Mr. GILPIN. I did not intend to make any remarks on this question; but I wish simply to correct what seems to be a misapprehension in the arguments that have so far been made upon this subject. Those who have preceded me upon both sides of the pending question seem to have assumed as true two points, namely: First, that the Pennsylvania railroad company has been the only offender in regard to the discriminations complained of; and, second, that it is only the country or communities between the termini of the road that is affected or that alone are injured. So far as my observation extends, there are other parts of the State than those lying along the line of the Pennsylvania Central railroad that have been injured by these discriminations against Pennsylvanians; and other railroad companies that have there made the discriminations we, by the section proposed, strive in future to prevent.

Situated on the line of the Allegheny Valley railroad, and about eighty miles from the city of Pittsburg, there is a large and productive oil field known as Parker's Landing, and from that point to Pittsburg by the railroad the freight charged is much greater than to the city of Cleveland, in the State of Ohio, although the distance to the latter is three times as great. For one-half of the money that the railroad charges for taking a barrel of oil from Parker's Landing to Pittsburg, it will take the like quantity from Parker's Landing to Cleveland. The result of this discrimination has been that the oil refineries in and about Pittsburg, and in the erection of which millions of dollars have been expended, are abandoned and the money invested in them lost, and the oil produced in our own State now goes to Ohio to be refined, and the profits of refining—which are very great—accrue to the people of Cleveland instead of to the citizens of Pennsylvania. Pittsburg is one of the termini of the Allegheny Valley railroad and her people are those that are particularly discriminated against and injured for the profit and benefit of citizens of Ohio. Talk about this railroad benefiting people of this State. Why, this very railroad was built by the bonds of Allegheny county and of the city of Pittsburg, and yet aside from the money and bonds so given and advanced that county and city would be better off to-day (so far as the oil trade is concerned) if that railroad had never been built. If to-day oil had to be transported from Parker's Landing in road wagons or by river, it would all go to Pittsburg to be refined, for it could not by these means be so rapidly, easily or cheaply carried to any place outside of the State, and Pittsburg would to-day be surrounded by thriving refineries instead of the empty tanks and ruined works of bankrupted refining firms and companies which now alone remain to mark what at one time seemed to be, and which, had it not been for unjust railroad discriminations, would have been the beginning of a large and profitable industry for her people.

The arguments against the section, in which the objectors allege that it attempts and does violate the laws of trade, seem to be based upon a misconception of the words contained in it, certainly of the idea which its words convey. And this misconception is more clearly shown by the comparison which was brought forward

against the section by the gentleman from Union, (Mr. Rooke,) viz: "That the rule laid down by the section would say that a grocer must not sell his groceries to a purchaser who buys a ton for a less price per pound than to the man who purchases a single pound." Whereas a correct simile is that the grocer must not charge the purchaser of a pound more for that single pound than he charges for a whole ton to the purchaser of the ton.

An inspection of the words in the section shows that the railroad companies are prohibited from charging more for carrying a shorter distance than they charge for carrying a longer distance; observe, not more per mile, but more than the whole charge for the longer distance. That is, if the Pennsylvania railroad company charge ten dollars for carrying a ton of freight from Pittsburg to Philadelphia, it must not charge more (although it may charge that much) for carrying a ton of like freight from Harrisburg to Philadelphia. Surely no injustice is done the railroad company by giving them for but a part of the journey compensation equal to what they charge for carrying the whole distance. A part is not greater than the whole, but on the contrary, if I recollect the axiom correctly, it is "the whole is greater than any of its parts." Do the gentlemen mean to say that, by the laws of trade, that axiom is not true? and that the laws of trade are so inconsistent with common honesty as to require the master of the vineyard to pay to the laborer who has agreed to work the whole day for a penny, more than that sum, merely because he was required to labor but a part of the time agreed upon?

Mr. STEWART. It may seem idle to prolong this discussion, but inasmuch as I will be called upon to vote on this section, I do not want my vote to be misunderstood. As the section stands I shall feel myself compelled to vote against it. There are several provisions in the section which, if they stood by themselves, I should most heartily support. Wherever it is demonstrated satisfactorily that an evil or abuse exists, I am ready to make any proper effort to remedy it. Now, our people do suffer certain grievances at the hands of these corporations. That is unquestionable. They have been pointed out by different delegates upon this floor. The gentleman who sits behind me (Mr. J. M. Bailey) has clearly demonstrated that our people are dis-

criminated against unfairly and unjustly in his particular section. He has told us that the people in Maryland can send their coal to the eastern markets for less than the people in his own section, eight cents per ton I think he said. Certain other gentlemen have pointed out other instances, but I need not go further than to my own home to get an illustration just as forcible and just as directly to the point. The people upon the northern frontier of Maryland, say in the neighborhood of Hagerstown, can send their flour to the eastern markets through Pennsylvania to New York and Philadelphia, for less than the people of my own section. Let me state it in the way it was presented to me by a farmer of my own county: "A farmer in Franklin county can afford to haul his produce to Maryland rather than to Chambersburg, if it is to be shipped to New York or Philadelphia, because it can be shipped for less money from Maryland than it can from our own town, and the difference will compensate him for the additional transportation to Hagerstown. This is all wrong, and it becomes us here to-day to do what we can to remedy it.

If the section attempted nothing more than the gentleman from York stated in his argument I should support it, because I understand this to be all that he claimed for it. But it does more than that. I submit that this one expression which is in the ninth line of this section would remedy all that evil: "That no corporation shall make a greater or heavier charge for a shorter distance than it does for a longer distance." If the Pennsylvania railroad company, or any other railroad company shall haul the produce of the people of other States at a loss to themselves, in order successfully to compete with other through lines, we cannot complain. We cannot expect them to do that for us, but we can reasonably demand of them that they carry our produce for as small an amount as they do the produce of other States, and when they do that, they do all we can reasonably demand of them. They must not put us at a disadvantage.

But if we should adopt this section it would prevent all reasonable competition and it would dwarf the operations of all these railroads. We are not hostile to the railroads and we should be most careful how we restrict them, because their interests are the same with ours. All that

we can reasonably ask of them is that they shall not discriminate unfairly and unjustly against us; that they shall afford us the same field for competition that our neighbors in the adjoining States have. When they give us that, they give us all we have a right to demand. When they deny us that, I repeat, we should interpose.

As I said before, if that provision stood alone in this section I should support it heartily, but inasmuch as the section if passed would dwarf and cripple these enterprises and prevent them from entering into successful competition with the great lines of other States, I shall vote against it.

The necessities of the case do not require this much of us, and indeed I am firmly persuaded that any such unnecessary restriction would injure not only the railroads, but the people whose interests are being so earnestly advocated in this discussion.

What the people want is a fair market, with honest competition. What the railroads want is a fair field to compete with each other. Both can be accommodated without abridging the just rights and privileges of either. Gentlemen seem to think that if, for the purpose of competing with rival companies, the Pennsylvania railroad should transport the freight of Chicago to Philadelphia at a loss, it should do the same for the people of Pittsburgh. The proposition needs only to be stated to be rejected. And yet their arguments are fairly stated in this modest proposition. They would by a schedule of rates establish a protective tariff for the benefit of our people, for it virtually amounts to this. The charges are to be in proportion to the distance, so that we who are nearer the markets shall have the unquestioned right to place our products in market for less than our neighbors. I am free to say that our people do not need any such protection, and I do not believe they want it. Give them always the right to transport their products at rates as low as their neighbors are made to pay, so that they can enter the markets with fair competition, and they will be satisfied. With less than that they will not be satisfied, and we owe it to them to secure to them this undoubted right. This we can do by adopting the single provision in the section to which I have referred.

Mr. T. H. B. PATTERSON. I merely wish to call the attention of the Conven-

tion for one moment to what we wish to accomplish by this section. The learned gentleman from Philadelphia (Mr. Cuyler) has announced as the foundation principle by which we ought to be guided in this matter, that competition is the life of trade. I say it is the life of trade and the life of the people also, and all we wish to accomplish by amending this section or by adopting it, is simply to keep competition open. That is all we ask. When a railroad takes my land or yours, it takes a public highway, and it takes it for the purpose of using it for the benefit of you and me, and it has no right to take that public highway and use it so as to take my property and then to go out west and bring another man's property and put it down in the east between me and my market. That is all we ask to prevent. We do not ask a *pro rata* freight bill. They have that in New York and they have it in other States, but we do not ask it here. But this section does ask that when they transport the property of the people of this State, and the property of people of other States, they shall make no discrimination against the people of this State; and also, to provide that there shall be no greater charge for a shorter than for a longer distance. That is all we ask, and the arguments that have been made here by the opposition against false positions and supposed positions have been merely made for the purpose of effect and in order to mislead the votes of delegates upon this floor.

Now, all we ask is just simply this: That a man out west shall not have the advantage of rich land and a far western back-woods home, and at the same time bring his products into market here at a less rate than a man who has to live in the east and within the bounds of Pennsylvania. We simply ask that a man who lives a hundred from a place shall not be made to pay a less rate than a man who lives only thirty miles. We simply ask that the right of competition shall be kept open, and that the public highway rights in the hands of these railroads shall still preserve to every man his relative position, shall preserve to him the relative position that he holds and that his property holds in the community where he was born and raised; and that is all that the people of Pennsylvania ask at the hands of this Convention. That is all that this section is intended to cover, and if it covers any more than that, then all

that the friends of reform will have to do is simply to vote down this amendment, which really strikes at the whole section, and then so amend the remaining part of the section as was indicated by the gentleman from Mifflin (Mr. Andrew Reed.) They have to do nothing more than amend, so as to prevent this unjust discrimination on transportation, and this unjust taking of a man out of his place in a community and discriminating against him and destroying fair, healthy competition on the *locus* where a man's home and his property is situated.

This pretended argument against a discrimination in favor of outside railroads amounts to nothing, because it is not aimed at by the section, and is not claimed on this floor by the friends of this measure. And if they did it would be nothing more than claiming that railroad companies should do their work at a rate that would pay them, and then outside of that should not make the people of this State pay for doing under-work for other States.

We simply ask that railroad companies as trustees of the public highways shall run them fairly and squarely, make a reasonable profit, and then shall not charge the people of this State or anybody else for additional profit; but if, by reason of the location of parties outside of this State, they have the privilege of competing roads and other local advantages which enable them to ship on through lines and by rivers and other means, that is no reason why we should allow our corporations to take and carry their produce to market at a lower rate and bring them right in and put them down in effect between us and our market. And yet that is what is contended for by striking out all restrictions, and by this amendment.

This amendment proposes to strike down all restrictions whatever and to say that a man who may live in San Francisco or on the Mississippi river can ship his freight over our railroads, right through, past our doors, and have it carried into market lower than we can have it carried, not lower per mile, because there is nothing of that kind in the section and nothing of that kind is contended for here; but simply that he shall not have the advantage, when he lives out beyond us, of coming in and doing business on better terms and a nearer market; that is all.

Now, I ask gentlemen on the floor of this House to vote against this amend-

ment for that reason, and then if they are friends of reform, as many of them profess to be, let them amend the section so as to prevent any misconstruction as to *pro rata* rates and vote for a measure which will enable the people of Pennsylvania to do business on their relative position and their relative distance from market, without being compelled to compete with the cheap labor and the rich farms and the far-off backwoods of the west. That is all we ask, and we therefore ask the Convention to vote down this amendment.

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. CAMPBELL. I ask for the yeas and nays.

The PRESIDENT *pro tem*. Do ten members rise to second the call?

The yeas and nays were ordered and taken with the following result:

Y E A S .

Messrs. Alricks, Armstrong, Barclay, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Bullitt, Clark, Corbett, Curry, Curtin, Cuyler, Darlington, Dunning, Edwards, Elliott, Ellis, Fell, Fulton, Hanna, Kaine, Knight, Lamberton, Lilly, Mann, Niles, Parsons, Purman, Read, John R., Rooke, Smith, Wm. H., Van Reed, Walker, Wetherill, Jno. Price, Wherry and Worrell.—39.

N A Y S .

Messrs. Achenbach, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Black, J. S., Buckalew, Calvin, Campbell, Church, Cochran, Corson, Cronmiller, De France, Ewing, Finney, Funck, Gibson, Gilpin, Guthrie, Hall, Hay, Horton, Howard, Landis, Lawrence, MacConnell, McClean, McCulloch, McMurray, Mantor, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Sharpe, Smith, Henry W., Stewart, Struthers, Turrell, White, David N., White, Harry and White, J. W. F.—48.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Carey, Carter, Cassidy, Collins, Craig, Dallas, Davis, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Lear, Littleton, Long, MacVeagh, McCamant, Metzger, Minor, Mitchell, Mott, Palmer, H. W.,

Porter, Pughe, Ross, Runk, Russell, Simpson, Smith, H. G., Stanton, Temple, Wetherill, J. M., Woodward, Wright and Meredith, *President*—46.

Mr. CAMPBELL. I call for the yeas and nays on the section.

Mr. BAER. I move further to amend.

The *PRESIDENT pro tem*. The delegate from Somerset moves to amend the section. The Chair will receive the amendment.

Mr. BAER. I move to strike out the words, "and the charges for freight and fares for passengers shall for equal distances in the same direction be the same," in the seventh and eighth lines, and insert:

"Taking into consideration the distance of transportation and the character of the road transported over."

I understand the chairman of the committee and the friends of the section to favor a construction that some of us think cannot fairly be put on the section as it stands. The amendment which I have here proposed will leave the section precisely with the construction they put on it and remove all doubts as to the charge per ton per mile. We can put the section in such condition as that we can vote for it without injuring the railroad companies in that regard and at the same time giving all that the most ardent friends of the section, according to their construction, ask at the hands of this Convention. I trust they will give it the consideration it deserves and that they will sustain the amendment; and in that shape, the section then being so amended, adopt the section itself. With this amendment in I shall go for the section. With this out or without something equivalent to it in its place, I shall be compelled to vote against the section, and I infer from the remarks of the gentleman from Franklin, with whose remarks I entirely concur, that he would be somewhat in the same condition; that he would feel himself compelled to vote against the section unless something of this kind be inserted. My own opinion is that he is right, he taking the same view that I do on this question.

Mr. HOWARD. Mr. President: I think that the delegate from Somerset perhaps has misapprehended the section under consideration. I judge from the character of the amendment offered and from his remarks that his idea is that this will prescribe or fix some rate that must be uniform on all the different roads of the

Commonwealth. That is not correct. This does not prevent each particular railroad company from fixing its rates; but whenever such roads as have connections outside of Pennsylvania bring in freights from other States and passengers from other States, they shall not discriminate in their rates against the people of Pennsylvania.

But this section does not undertake to regulate the freights inside of the State, freights starting for instance from one point in the State to another, only so far as it says that they shall not charge for a shorter distance more than they do for a longer distance. If a road has heavier grades it will fix its rates accordingly, but when fixed, they cannot charge more for a longer distance than a shorter one. If their grades are heavier their rates will be higher. This by no means undertakes to say that the railroads throughout the Commonwealth shall make uniform charges; nothing of the sort.

Am I right in understanding that the amendment is to the effect that, wherever the grades or the character of the road is such as to make the transportation more expensive, there the charge may be greater?

The *PRESIDENT pro tem*. The Chair cannot tell. The amendment has been read.

Mr. HOWARD. Let it be read again.

The *PRESIDENT pro tem*. The Clerk will read the amendment and the delegate will understand it for himself.

The *CLERK*. The amendment is to strike out the words, "and the charges for freight and fares for passengers shall for equal distances in the same direction be the same," and insert in lieu thereof the words, "taking into consideration the distance of transportation and the character of the road transported over."

Mr. HOWARD. I cannot see that the amendment can proceed upon any other idea than that some roads will have grades that make it more expensive to transport over than others.

The *CLERK* read the section as proposed to be amended.

Mr. HOWARD. Still I cannot see the propriety of the amendment, unless it is upon the idea that some roads have heavier grades and it will be more expensive to transport over them than other roads. This section seven does not undertake to prescribe any uniform rule at all for the roads of the Commonwealth; only specifies that where they have con-

nections outside and bring freight or passengers into this State they shall give Pennsylvanians as favorable terms as they give people of other States.

While I am up I desire to refer to an act of Assembly passed in 1861 that affects the Pennsylvania railroad, because a good deal has been said about that road. We are told that it is going to fall back upon its original charter and it is going to charge us clear out of court; and objection has been made to this clause providing that they shall not charge a higher rate for a shorter distance than for a longer. I speak now only so far as the Pennsylvania railroad is concerned, and this will apply to the amendment so far as that road is concerned. Now, sir, when the act of Assembly was passed repealing the tonnage tax the Pennsylvania railroad entered into a new contract with the State whereby they surrendered their charter in all the particulars that are specified in this act of Assembly, and one of the particulars is this: "Nor shall the rates charged to any local point exceed those charged to any point of greater distance in the same direction."

That is precisely this section; but they have violated this act of Assembly every day since they signed this contract; and so far as that road is concerned, it is applying no new principle to it at all to apply the principle that is contained in this proposed provision of the Constitution.

It also stipulated that so far as the rates to the east and west, to Baltimore, New York and Philadelphia are concerned, it would charge no higher rates than it charged to its western customers. In other words, it agreed by this act of Assembly not to discriminate; so that it cannot fall back upon its charter, so far as the main line is concerned.

It stipulated also that "the local rates between Pittsburg and Philadelphia stations, on the line of the Pennsylvania railroad, shall at no time exceed the gross rates charged between Philadelphia and Pittsburg."

It stipulated also: "Nor shall local rates between any two stations on the road, between Philadelphia and Pittsburg, exceed the through rates made from time to time under the provisions of this act; nor shall the rates charged to any local points exceed those charged to any point of greater distance in the same direction."

Now, sir, the agents of the Pennsylvania railroad ought to be estopped by their own contract. They should not find fault

with this section because they have agreed to it. So far as their charter was affected by this act of Assembly, they surrendered their chartered right to charge a greater sum between Pittsburg and Philadelphia—that is, the whole length of the main line—and on freights through to Baltimore, New York or Philadelphia, or freights passing westward; and yet they violated this act of Assembly. There is no penalty specifically attached to it, and shippers only remedy would be to bring an action for damages, I suppose, in the courts.

Mr. President, I cannot see that the amendment offered by the delegate from Somerset would have any material bearing upon the section. If I did I should be glad to support it, for I certainly do not wish to be captious. I am willing to accept anything reasonable, so far as I am concerned, to save what I conceive to be a great and just principle.

Mr. KNIGHT. Mr. President: It has been stated by members of the Convention that this is a very important subject. In that statement I fully agree. It is a subject concerning enterprises wherein over five hundred millions of money are invested in this State. It is a subject that is not sectional, but to a very great extent national. We have railroads running from the Atlantic to the Pacific, and in a few years will, perhaps, have a larger number of them. I have listened to the debates here with very great interest, and am somewhat in doubt whether we are able to make proper laws governing the railroad interests of this Commonwealth. The stockholders, the people interested in having the railroads properly managed, generally use the best judgment they have in selecting men of experience and talent whom they suppose qualified to manage them.

This subject is so important that I think it proper that I should make a remark cautioning the Convention not to put into our Constitution so much of legislation. We were talking here against the Legislature some five or six months, so that I almost came to the conclusion at one time that, if we could, it would be better to abolish the Legislature entirely; but that cannot be done.

Sir, it is a great deal easier to pull down than it is to build up. I do not pretend to know as much about managing railroads as some others, but I think if you pass all the sections reported by this committee, it will be utterly impossible to

live up to the law and manage the railroads of this Commonwealth. If there was a national law governing all the railroads north and south of us, with regard to their freights, time, equipment, qualities of road &c, it might be done; but unfortunately for the State of Pennsylvania it costs more to build our railroads per mile, as I believe our statistics will show, than the railroads in any other State in the Union. With our expensive roads, not only expensive to build, but expensive to run, we have to come in competition with other roads constructed and operated at a greatly less cost. Now, sir, if we attempt to cripple our railroad corporations, something must be injured; either the travel will not be properly accommodated, or else the property itself will be greatly injured.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Somerset.

Mr. BAER. On that I call for the yeas and nays.

Ten delegates rising to second the call, the yeas and nays were ordered, and being taken resulted as follows:

Y E A S .

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Barclay, Biddle, Boyd, Brodhead, Broomall, Brown, Bullitt, Carter, Clark, Corson, Curry, Curtin, Darlington, Dunning, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Funck, Gibson, Guthrie, Hall, Knight, Lamberton, Lawrence, Lilly, MacConnell, Mann, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Purviance, Samuel A., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Struthers, Turrell, Walker, Wetherill, John Price, Wherry and White, J. W. F.—50.

N A Y S .

Messrs. Armstrong, Baily, (Perry,) Black, J. S., Buckalew, Calvin, Campbell, Church, Cochran, Corbett, Cronmiller, De France, Finney, Gilpin, Hanna, Hay, Horton, Howard, Landis, M'Clean, M'Culloch, M'Murray, Mantor, Patterson, D. W., Purman, Reynolds, Rooke, Sharpe, Stewart, Van Reed, White, David N., White, Harry and Worrell—32.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Aincy, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bigler, Black, Chas.

A., Bowman, Carey, Cassidy, Collins, Craig, Cuyler, Dallas, Davis, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Kaine, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Porter, Pughe, Purviance, Jno. N., Ross, Runk, Russell, Simpson, Smith, H. G., Stanton, Temple, Wetherill, J. M., Woodward, Wright and Meredith, President—51.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. CORSON. I move to strike out all after the word "same," where it occurs the second time in the eighth line, or rather all after the amendment just adopted. I have no desire to discuss the question. It is very plain; it is a matter of detail, and ought not to be here.

Mr. BUCKALEW. Mr. President: I have so far been voting to retain this section in order that it might be within reach on third reading and receive further consideration prior to that time. I confess I require myself some information in regard to the operation of some of the clauses of this section. What I desire to say at this time is that my vote for this section is provisional and subject to such further examination as I shall be able to give it before the question shall be finally disposed of. But if the amendment of the gentleman from Montgomery (Mr. Corson) shall be adopted, striking out that part of the section which follows the word "same," in the eighth line, the section will come so near meaning nothing that I believe, for one, I shall consent very heartily to drop it.

There is to be no discrimination against citizens of our own State—that is all the first part of the section says—"taking into account the character of the road," travel, and so on. If anything can be made more vague and more completely unimportant than that I should like to see it. There is still retained in the section the clause borrowed from Illinois providing against charging more for a shorter than for a longer distance. If the section shall be retained as it now stands I will vote for it in order that it may be further considered.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Montgomery.

The amendment was rejected.

Mr. EWING. I move to amend by inserting after the word "distance," in the

tenth line, the words, "including such shorter distance." I can understand why a railroad company might be permitted to charge a greater price for carrying goods ten miles on one part of its road than it should charge for carrying twenty miles on another part of the road, depending on the character of the road. But I think it is a fair limitation to say that they shall not carry freight over a longer distance, including that shorter distance, and charge a less rate; in other words, that they shall not charge more for carrying from Harrisburg to Lancaster than they charge for carrying from Harrisburg to Philadelphia; and I think that the limitation that is put on them not to charge more for a shorter distance than they do for a longer distance, should be over the same part of the road. So I move this amendment and I hope the friends of the section will agree to it.

Mr. CUYLER. I call for the yeas and nays on the amendment.

The call was seconded by ten delegates, and the yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Bailly, (Perry,) Broomall, Clark, Corbett, Curry, Darlington, Edwards, Elliott, Ewing, Hall, Hay, Kaine, Knight, Lilly, Mann, Niles, Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, White, David N., White, J. W. F. and Worrell—29.

NAYS.

Messrs. Alicks, Armstrong, Baer, Barclay, Biddle, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Church, Cochran, Corson, Cronmiller, Curtin, Cuyler, De France, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hanna, Horton, Howard, Lamberton, MacConnell, M'Clellan, Mantor, Palmer, G. W., Parsons, Patton, Read, John R., Rooke, Sharpe, Stewart, Van Reed, Walker, Wetherill, Jno. Price, Wherry and White, Harry—48.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Baker, Bannan, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Bowman, Ca-

rey, Carter, Cassidy, Collins, Craig, Dallas, Davis, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Landis, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Russell, Simpson, Stanton, Struthers, Temple, Wetherill, J. M., Woodward, Wright and Meredith, President—56.

PAY OF CLERKS, &c.

Mr. HAY. I ask leave to make a report.

The PRESIDENT *pro tem.* Shall the gentleman have leave? ["Yes."] The Chair hears no objection and the report will be received.

Mr. HAY. I am instructed by the Committee on Accounts and Expenditures to make the following report:

The Committee on Accounts and Expenditures, in pursuance of the following resolution of the Convention, to wit: "*Resolved*, That the Committee on Accounts and Expenditures be requested to report a resolution directing warrants to be drawn for the payment to the clerks and other officers of the Convention of one-fifth of their compensation," respectfully report the following resolution:

Resolved, That warrants be drawn in favor of the following-named persons, the Clerks and other officers of the Convention, for the sums set opposite their respective names, being one-fifth of their compensation as fixed by the Convention:

D. L. Imbrie, Chief Clerk.....	\$550 00
Lucius Rogers, Assistant Clerk....	550 00
A. D. Harlan, do do	550 00
John L. Linton, Transcribing Clerk.....	400 00
A. T. Parker, Transcribing Clerk....	400 00
James Onslow, Sergeant-at-Arms,	400 00
C. M. Brown, Assistant Sergeant-at-Arms	360 00
Clement Evans, Doorkeeper.....	360 00
Frank Bently, Assistant Doorkeeper.....	360 00
Henry B. Price, Postmaster.....	360 00
B. F. Major, Assistant Postmaster	360 00
	<hr/>
	\$4,650 00

The resolution was read the second time and agreed to.

The PRESIDENT *pro tem.* The hour of six having arrived, the Convention stands adjourned until to-morrow morning at nine o'clock.

ONE HUNDRED AND THIRTY-NINTH DAY.

SATURDAY, July 12, 1873.

The Convention met at 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.

RESIGNATION OF MR. COLLINS.

The PRESIDENT *pro tem.* laid before the Convention the following communication, which was read :

UNIONTOWN, FAYETTE COUNTY, PA., }
July 9th, 1873. }

Hon. WM. M. MEREDITH,
President Pennsylvania Constitutional Convention :

SIR : I hereby tender, through you, my resignation as a member thereof.

Respectfully your obedient servant,
JOHN COLLINS.

Mr. LILLY. I move that the resignation be laid on the table.

Mr. WHERRY. I second the motion.

Mr. LAWRENCE. I regret exceedingly that Mr. Collins has found it necessary on account of ill health to tender his resignation. I hope he will soon be better. We all know that he has been laboring under severe physical affliction since the winter, especially during the latter part of the session. I hope the resignation will be laid on the table and that Mr. Collins will be requested to reconsider his action.

The motion to lay upon the table was agreed to.

LEAVES OF ABSENCE.

Mr. ANDREW REED. I ask leave of absence for Mr. Ellis for next week.

Leave was granted.

Mr. PURMAN asked and obtained leave of absence for Mr. J. N. Purviance for a few days from to-day, on account of illness in his family.

Mr. PARSONS asked and obtained leave of absence for Mr. Stewart for a few days from to-day.

TO-DAY'S SESSION.

Mr. LILLY. I offer the following resolution :

Resolved, That this Convention will adjourn to-day at twelve o'clock M., to meet on Monday next at ten o'clock A. M.

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

Mr. DARLINGTON. I move to strike out "twelve" and insert "one." ["No." "No."]

Mr. KATNE. What do you gain by that?

Mr. LILLY. I will compromise with the gentleman on half-past twelve.

Mr. DARLINGTON. I will not press my motion.

The resolution was agreed to.

SUBMISSION OF THE CONSTITUTION.

Mr. BUCKALEW. Mr. President: I desire to call up the resolution I offered yesterday. I am indifferent about it myself; but a number of gentlemen desire the question acted upon. I do not contemplate debating it.

The PRESIDENT *pro tem.* The resolution will be read.

The CLERK read as follows:

Be it resolved as follows :

First. That when the article on railroads shall have passed second reading the Convention will adjourn to meet again the fifteenth of September next, at ten o'clock A. M.

Second. That articles passed on second reading, including the legislative article, be reprinted as amended, and that three thousand copies thereof be printed in pamphlet form for general distribution.

Third. That this Convention will submit the new or revised Constitution proposed by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next.

The PRESIDENT *pro tem.* The question is on proceeding to the second reading and consideration of the resolution.

Mr. LILLY. I hope the delegate from Columbia will not press it now.

Mr. TEMPLE and Mr. ELLIS called for the yeas and nays.

The CLERK proceeded to call the roll, and concluded the call.

While the Clerk was footing up the result of the vote, Mr. J. R. Read entered the Hall and asked to have his vote recorded in the affirmative.

Mr. LILLY. I object to the gentleman voting. He was not within the bar when the roll was called. He has just come into the House.

The PRESIDENT *pro tem.* The Chair will inquire of the delegate from Philadelphia whether he was in the Hall at the time of the calling of the roll.

Mr. J. R. READ. I was not.

The PRESIDENT *pro tem.* Then the name must be omitted under the rule.

The result of the vote was announced as follows:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Baer, Barclay, Bigler, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Calvin, Curry, Curtin, Darlington, Dunning, Elliott, Ellis, Ewing, Fell, Howard, Knight, MacConnell, M'Murray, Parsons, Patton, Pughe, Reynolds, Rooke, Sharpe, Stewart, Struthers, Turrell, Wetherill, J. Price, White, J. W. F., and Worrell—36.

NAYS.

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Campbell, Carter, Clark, Cochran, Corbett, Cronmiller, De France, Edwards, Fulton, Funck, Gilpin, Guthrie, Hay, Horton, Kaine, Landis, Lawrence, Lilly, M'Culloch, Mann, Mantor, Newlin, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Simpson, Smith, Wm. H., Temple, Walker, Wherry, White, David N., and White, Harry—38.

So the question was determined in the negative.

ABSENT.—Messrs. Ainey, Andrews, Armstrong, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Bullitt, Carey, Cassidy, Church, Collins, Corson, Craig, Cuyler, Dallas, Davis, Dodd, Finney, Gibson, Green, Hall, Hanna, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Niles, Palmer G. W., Palmer, H. W., Porter, Purviance, John N., Read, John R., Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Stanton, Van Reed, Wetherill, J. M., Woodward, Wright and Meredith, *President*—59.

HOURS OF SESSION.

Mr. BRODHEAD. I offer the following resolution:

Resolved, That on and after Tuesday next the sessions of this Convention shall be from nine A. M. to three P. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted, ayes twenty-one; less than a majority of a quorum. So the resolution was not ordered to a second reading.

RAILROADS AND CANALS.

Mr. D. N. WHITE. I move that the Convention proceed to the consideration of article No. 17.

The motion was agreed to, and the Convention resumed the consideration on second reading of the article on railroads and canals.

The PRESIDENT *pro tem.* When the Convention adjourned yesterday it had under consideration section seven of the article as printed. That section will be read as amended.

The CLERK read as follows:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation, taking into consideration the distance of transportation and the character of the road transported over; and a higher charge shall never be made for a shorter distance than is made for a longer distance, and no special rates or drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. T. H. B. PATTERSON. I move to amend by striking out all after the word "section" and inserting the following substitute:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof, nor make a

higher charge for a shorter distance than for a longer distance, including such shorter distance; and no special rates or drawbacks shall either directly or indirectly be allowed, except excursion and commutation tickets."

Standing here as the representative of the railroads of the State as well as of the people, I think that the representatives of the railroads, as well as those who are seeking to restrict them, ought to concede that there is some middle ground, some right principle on which we can all agree, and which will be a protection to the railroad interests of this State in their healthy operation as well as to the shippers and producers of the State. As such I have offered this substitute, and I ask the earnest attention of those delegates upon this floor who have been contending for the interest of railroads as against producers, as well as of those who have been contending for the interests of shippers and producers and against the monopoly of railroads; I ask the earnest attention of gentlemen for about one minute while I indicate wherein this substitute changes the section before the Convention.

It includes all the first part of the section, down to the word "thereof," and it includes all the first part of the section which my learned and able friend from Philadelphia (Mr. J. Price Wetherill) proposes to leave in the article, and the only modification it makes in that portion of the section is to insert the words "between or" before the word "against," in the latter part of the third line, so as to make that read "between or against the people thereof."

Then, immediately after the word "thereof," it puts in the words "nor make," and then strikes out all of the section from the word "thereof" down to the words "and shall," in the closing part of the eighth line. Then it reads "nor make a higher charge," omitting the words "shall never be made for a shorter distance than for a longer distance;" omitting the words "is made," in the tenth line, and inserts the words "including such shorter distance," and then goes on with the section, "and no special rates or drawbacks shall, either directly or indirectly, be allowed, except commutation and excursion tickets."

Now, if the delegates will give me their attention I will read the substitute.

"No corporation engaged in the transportation of freight or passengers in or

through this State shall make any discrimination for the carriage either of freight or passengers between or against the people thereof; nor make a higher charge for a shorter distance than a longer distance, including such shorter distance. And no special rates or drawbacks shall, either directly or indirectly, be allowed except excursion and commutation tickets."

I wish to say this: This substitute proposes distinctly three things. It omits the *pro rata* provision. It does not attempt to prescribe any *pro rata* rate or any rate whatever. The term "charge" is an aggregate charge, and if any delegate on the floor of this House will prefer to put in the word "aggregate" I am perfectly willing to so modify the substitute by putting the word "aggregate" before the word "charge."

But I take it, if we come to a legal interpretation, it is simply a charge for a longer than for a shorter distance and has no reference to rates whatever.

Now, this section just proposes three things: First, it proposes to prevent a railroad or common carrier company, after it has taken the property of the people of Pennsylvania, from taking a western farmer, or a western producer, or a western manufacturer, or a shipper, and placing him between the Pennsylvania manufacturer and farmer and producer and his market. It does not prevent their bringing him up to the State line. They can bring him up to that point; that is, they can bring the western man or the far-off shipper and put him on an exact equality with the home or short shipper but they cannot put him nearer. That is all it prevents. It does not attempt anything like a *pro rata* apportionment. There is not a word in it that looks to that.

Now, I call the attention of the railroad men on this floor particularly to that feature of this subject. It is free from any such criticism. It simply says that a man shall ship his freights to market on an equality with everybody that is not nearer to the market than him, and that no man further from market shall ship cheaper than he shall, but they shall all be equal. Therefore it does not interfere with the competition of through routes at all, because competition on through routes can bring men right up, and put them on an equality with you; they can put their rate outside just as low as they please, but they shall not take another man's property under different circum-

stances of location and put him at a shorter distance; that is all it proposes. It says that the manufacturers of the west, and the producers of the west, as against the manufacturers and shippers and producers of the State, shall not have the advantage of being taken and put nearer their objective point than other shippers or manufacturers, but shall remain on an equality so far as prevents them from being put nearer by railroad companies; although railroad companies may put them as near, provided they do not change the relative position by putting them nearer. Now, gentlemen, is not that fair? Is it right that a common carrier corporation (and here I speak as a matter of principle) should take your property and mine, and then after they have taken our property, take and put us out of the market, putting men who are further away from market between us and our market, so as to interfere with our manufacturing interests and our products of every kind and description by taking and removing us away up to the Mississippi river, and putting other men between us and our objective points. That is all that this section aims to do in that regard.

Then the second object of this section (the first is produced by the first two clauses of the section) is to prevent discriminations against or between the people of the State, and charging a higher rate for a shorter than a longer distance. It covers that ground and no more; it has nothing to do with *pro rata* rates.

Then the other provision of this section is simply to provide that no drawbacks or special rates shall be allowed, except in commutation and excursion tickets. Now what does that do? That clearly prevents railroad companies from taking and giving special favors; in other words, it prevents railroad companies from taking and saying to this manufacturer, this business man, you shall stand up on high, and saying to another man, you shall go down. As my learned friend from Union (Mr. Rooke) very well said, it very often benefits a man to have special rates or to have a drawback, and that, as a matter of personal and private favor, no man would object to; but when it comes to a public corporation who controls the highway rights of the State, who have taken your and my property in order to build that highway—when it comes to making such discrimination and building up whom they please and putting down whom they

please, then it becomes unjust; and this simply says, if they have any such discriminations or favors to give, they shall give them generally.

Now observe, and I ask the delegates to attend one moment, all the good that could be accomplished by the special rates referred to by the gentleman from Union can be accomplished by general rates. For instance, they can establish a general rate by which they can give to all the manufacturers of a certain capacity certain discriminations and favors, provided they increase their capacity to certain other amounts. In doing that they make no discriminations and they give no special rate or drawback, because it is a general rate; and whenever a drawback or a special rate is made a general plan, then it does not hurt anybody, and it can foster the manufacturing of any locality without touching or hurting the individual. Therefore, I say that is a safe principle to put in the Constitution, that there shall be no principle rate or drawback, because whenever you make the special fostering favors general to all that come within their reach, then they are not special rates and are not touched by this prohibition.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. BAER. Before the vote is taken by which all that was done yesterday shall be wiped out, I wish to say one word. I shall not undertake to repeat anything that any one else has said except to say that the amendment offered by the gentleman from Allegheny does not cure the evil complained of. It leaves the section in just the same bad condition that it was originally. It does not remove the bad feature of compelling the paying of the same rate of freight per ton per mile, although in express terms it does not say so. If you ship freight to Philadelphia, the amount is not ascertained in the aggregate or in bulk; when you come to ascertain what it shall be it is figured out on the basis of so much per ton per mile, and the only way to ascertain it at all is to put it on that basis. The amendment is therefore lame in that respect, and unless it be further amended, we shall still be perpetrating this injustice.

Now, sir, in reply to a remark of the gentleman from Allegheny that those who are in favor of railroads and against the producers are here urging the passage of this section, I beg to say to him that I claim to be, not one in favor of railroads and against the producers, but one of the

producers themselves; and I ask this Convention now how many of the lawyers who are advocating this proposition have taken stock in railroads whereby the country has been developed? How many of them have invested in enterprises to develop the mining and manufacturing interests of the State? How many of them have put their dollars and cents into such a condition that the interest of the people shall be benefited? Why, sir, when lawyers rise to speak on this subject they invariably preface their remarks by saying that it is an interest entirely foreign to them, that they have no interest in railroads either one way or the other, and yet they need not say so because their votes in the Convention indicate and prove to the people that they not only have no investments in that direction, but that they have no heart for the great business that encourages the industries of the people. How many of them I ask have made it possible for two spears of grass to grow where one grew before? How many of them I ask have given the industries of the State such an impulse that two poor men can procure labor where but one could procure it before? How many of them have made it possible for two poor families to live where but one lived before? Their votes here and their disposition, have been to crush these enterprises, so that their pretence of being in favor of the poor laboring man is all profession.

Now, sir, I shall test the sincerity of the friends of this measure by agreeing that the amendment proposed by the delegate from Allegheny shall be passed if they will insert but two words more in it. If they will insert the words "unjust or unreasonable" in it, it will do justice all around, and those two words I propose to insert in the third line of the amendment after the word "any," so as to make it read: "That no unjust or unreasonable discrimination shall be made." If they will put in those words I will vote for the amendment. If they do not put them in, it leaves the provision just as bad as it was before, and I shall vote against it. I inquire of the Chair if it is proper to move an amendment at this time?

The PRESIDENT *pro tem.* It is.

Mr. BAER. Then, sir, I move to insert after the word "any," in the third line of the amendment, the words "unjust or unreasonable," so as to make the amendment read:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any unjust or unreasonable discrimination."

The PRESIDENT *pro tem.* The question is on the amendment to the amendment.

Mr. COCHRAN. Mr. President: I am somewhat surprised at the spirit which is manifested here to-day by the gentleman from Somerset (Mr. Baer.) He seems to have had some sort of new spur applied to him to make him more than ordinarily denunciatory this morning. I understand him to say that this measure is iniquitous. Well, sir, that is a very hard word to use with regard to any measure which is presented before this body and which has received the consideration, as I understand it, fair, mature and deliberate of a committee of which he himself was a member, and which he certainly will not say was controlled or governed by any iniquitous design or purpose.

But why pitch into the lawyers of this Convention this morning? There is an old proverb that "it is a dirty bird that fouls its own nest." Now, sir, it unfortunately happens for my friend from Somerset that he himself is one of us; he is one of the great class of lawyers whom he denounced this morning as not having put one dollar of their money, as I understood him, into any of these great works of improvement in this Commonwealth, but have simply lived as parasites upon the industry and prosperity of the community. Sir, I did not expect a charge of that kind to come from a member of the profession of which I am one of the humblest members. I never understood that the legal profession in this State was a profession that was lacking in public spirit or in giving aid to measures which were calculated to promote the public interests.

It is suggested that we never have any money. I admit, sir, we have not as much money as some other people in the community, but of the little that we have I think we contribute rather a larger proportion than most other classes to objects of that kind.

Now, Mr. President, I am one of those who are sincerely desirous to pass a reasonable, just, and at the same time efficient measure on the subject which is now under consideration. The amendment of the gentleman from Somerset, which was adopted yesterday, was adopted in haste, without time for consideration and reflection, and although I

voted against it, I admit that I did so with some hesitation at the time; but further consideration and reflection induces me this morning to sincerely believe that that amendment is in itself one of the most impracticable and inapplicable provisions that you could possibly insert in any section of this article.

Why, sir, how in the world could you determine a question which depended upon the consideration of the distance of transportation and the character of the road transported over? What measure, what rule, what possible test could you apply to a provision of that kind? How could you bring it down to practice? Why, sir, the great difficulty of this question is the use of these general indefinite phrases. I know of a case which has recently occurred between individuals and one of the railroad companies in this State, in which I believe that it was admitted that there was strong equity in favor of the plaintiff; and yet if I understand that case—I have not seen the decision—it was determined on the construction of the single word "average," ruling out all the equity which was apparent on the face of it in favor of the plaintiffs. If I am wrong in that, the honorable gentleman from my own county, distinguished as a farmer, will correct me.

Mr. J. S. BLACK. What is that?

Mr. COCHRAN. I stated that the case was decided on the construction of the word "average." Am I wrong or right?

Mr. J. S. BLACK. I believe it was.

Mr. COCHRAN. I believe it, too, although I have not seen the opinion. Mr. President, there is the difficulty in placing in statutes or in sections of the Constitution words of general and indefinite signification, words under which you are compelled to resort to the use of the testimony of so-called experts, whose testimony is as unreliable in matters of business as the testimony of medical experts is in cases of homicide.

Now, the proposition is to introduce into this amendment the qualifying adjectives "unjust or unreasonable." What construction are you going to put upon these words? Let me just state by way of illustration what I understand to be the difficulty in regard to this matter, a difficulty which has brought about great trouble and great confusion, all this trouble and confusion in the State of Illinois. The Constitution of the State of Illinois provided that there should be no unjust discrimination. That was, I be-

lieve, its language. Then the Legislature undertook to pass a law on that subject, inserting in the statutes the words we have already put into this section, that a higher charge should never be made for a shorter than for a longer distance. When the courts were called upon to construe that they said that that law was unconstitutional because it did not always follow, in their estimation, that a greater charge for a shorter distance might not be made than for a longer distance so as not to be inequitable or unjust. That was a narrow construction on that one word which brought about the whole of this trouble in the State of Illinois, which brought about that unseemly controversy between the people and one of the learned judges of that State, whose motives I certainly do not impeach. It brought about the removal of that judge from the bench and his substitution by another—a thing which I presume every right minded gentleman will regret, but which, it seems to me, you can scarcely blame the people for effecting under the circumstances.

Now, sir, will you in this Constitution throw in a bone of contention by inserting such qualifying adjectives as these? Can you not adopt something which is positive, direct, clear and distinct, so that when you come before your courts of justice you will not be ruled out by a construction of indefinite phrases, or put to the impossible alternative of proving that which is almost in the nature of the case incapable of being made out by evidence such as I apprehend would be required under the amendment of the gentleman from Somerset, adopted yesterday afternoon. I do not characterize that amendment as iniquitous, for I know it was not so, and not only do I not so characterize it, but I say, in justice to that gentleman, that I feel confident that he intended it in all fairness and rectitude. Believing that, I was strongly induced to favor it, but further reflection convinced me that without any design on his part whatever that amendment will work great and manifest injury and be destructive of the whole substance of this section of the Constitution.

I hope we shall not throw any such qualifying words into this section as the gentleman this morning proposes. I hope we shall stand by the amendment of the gentleman from Allegheny, (Mr. T. H. B. Patterson,) which I am willing to take,

as it removes largely from this section matter which has been objected to by other gentlemen. I am willing to accept it as a compromise and an attempt to avoid objectionable provisions, and I hope, therefore, that this Convention will sustain the amendment and pass the section as it shall be so amended.

Mr. PURMAN. I suppose that any man who considered the importance of the subject and the difficulty of having a clear conception with regard to it would have expected the discussion upon this section and the preceding sections of this article to have been as spirited as it has proved to be. It is not denied, I suppose, even on the part of the most ardent friend of railroad interests in Pennsylvania that some abuses have crept in with regard to the carrying of freight, more perhaps than with regard to the carrying of passengers. Some unjust discriminations have been made. It is impossible that a great interest, such as the railroad interests of this State, should be carried on for any length of time without some injustice having been done to the people. It is not surprising that the people should agitate the subject and protest against the slaughter of their interests in this particular. I regard it for the best interests of the railroads as well as of the people that some proper limitations should be thrown around the carrying interests of railroads, such as will not cripple them, and at the same time to secure the confidence of the people. I have often attempted to draft a section which would protect the people from the abuses of which they complain, and at the same time not cripple the railroad interest of the people and the State, but I confess it is extremely hard to find apt words which will accomplish the object only. This task I found to be the more difficult and perplexing, because the interest of railroads is the interest of everybody. It is not necessary for me to deliver a lecture here this morning upon the value of railroads, what Pennsylvania would have been without the aid of railroads and what they have done for Pennsylvania; and on the other hand it is not necessary for me to attempt to portray the injuries, either real or imaginary, which the people have suffered at the hands of the railroads. The practical question for us to consider is, how we are to so meet the troubles that are upon us as to restore confidence to the people in these great public enterprises, and at the same time not to cripple the railroad interests, be-

cause in crippling the railroad interests we cripple the people. I say it is very difficult to put in phraseology a section that will be elastic enough to extend and embrace and allow the railroads to grow, and at the same time to protect the people.

No one will pretend to say that the railroads can carry freight ten or twenty miles for the same consideration per mile that they can carry it for one hundred or five hundred miles. It requires the same number of hands to load the cars and unload them, to switch them on and switch them off the track to carry freight ten miles as it does for five hundred miles. When a railroad company charges what it costs them to load and unload their cars or freight carried for ten miles, the same as if carried five hundred miles, it does nobody injustice. Then when it comes to the actual distance carried, they cannot apportion it as ten miles is to five hundred and no reasonable man can ask it. People do not ask to impose any such burdens or restraints upon the railroads. What they want is that they shall be reasonable and that they shall not be oppressive. I think the amendment of the gentleman from Pittsburg, (Mr. Ewing,) offered yesterday, was a very reasonable one, that they shall not charge for carrying freight a shorter distance a greater sum than they would charge for carrying it a greater distance over the same road.

For illustration, if the railroads can carry freight or passengers from A to C for one dollar they ought to be able to carry freight or passengers from A to B, B being the intermediate point, for one dollar, because the expense of loading and unloading cars, the switching on and off, the peculiarities of the road over which it is carried and the value of that portion as a carrying interest for passengers and freight are all involved. But we should in some way provide to reach this case. Goods should not be shipped in Philadelphia to Cleveland and brought back to Pittsburg for a less rate per ton than would be charged to carry them from Philadelphia to Pittsburg. We should protect the interests of Pennsylvania, and prevent the railway interest from building up Cleveland at the expense of Pittsburg, and prevent the railroad company from charging less on goods shipped from Philadelphia out to Ohio and brought back again to Pittsburg, than they do on goods shipped directly to Pittsburg. I do not know the facts. I do not pretend to say, of my own personal knowledge, that such

has been the fact, but if such has been, it ought to be prevented in the future. Doubtless instances of this kind have occurred inadvertently. Doubtless they have occurred sometimes in an effort on the part of these corporation to make money, and if it is done in that way at the expense of the people and particular business interests it ought to be restrained. They ought to be restrained also from giving a preference for carrying coal brought out of their own mines over that of some individual or individual corporation that has no interest in the railroad in carrying the coal from their mines. If the railroad companies are engaged in mining and manufacturing (which they ought not to be) they ought not to give any preference to their goods in transportation over their road, and as common carriers they cannot without a violation of law, and incurring liability to the party injured. And in all such cases, doubtless, falsehood is practiced by the shipping agents, so as to protect the company from liability to the injured party.

We all know very well, as lawyers, that as common carriers they cannot refuse to carry the coal or other goods of other corporations or individuals without incurring a liability. But practically, when it comes to enforce it, the party is injured as much by seeking his remedy in law as he would be to submit without making any complaint. Now, what do we gain by putting such a restriction in the Constitution? Railroad companies are bound to carry in the order in which the application is made to them for transportation. When they depart from this rule and avoid liability, they must manage the business of common carriers unfaithfully. If their agent untruthfully represents that A has presented an application for transportation before B, whereby the goods of the first is favored at the expense of the latter, the only remedy would then be in an action on the case for fraud, and in such a case a constitutional provision would be no better than the common law. This whole subject depends so much upon the laws of commerce and the peculiar interests of individual enterprise, as to render it extremely difficult to manage. Indeed we are likely to produce as much or more mischief by our action, and injure the people, as they have already suffered.

This section would, perhaps, be as effectual as any constitutional provision

you can make, but very much, after all, depends on the fidelity and integrity with which these roads are represented by their agents. I am not sure, if I cannot get anything better, but that I shall vote for this section. I would like to see it improved, yet I am not sure that there is not as much mischief in it as the mischief which is intended to be avoided by it. I confess that the subject is a very difficult one, and I do think that no reflections ought to be made against the Committee on Railroads and Canals, or upon its distinguished chairman for the manner in which this report was prepared. I suppose that anybody else would have encountered the same difficulties that that committee has encountered, the subject being new and difficult. They were, however, gentlemen who have had experience in this subject and they have done that which seemed best to be done. I have been thinking for the past four or five years upon the matters embraced in this section, and I confess that it has always staggered me to reach any satisfactory conclusion, and perhaps it is still better to trust to the great principles of natural justice, trust to the elastic power of the common law, and the rights that parties have under it as it now stands, and as it may be applied in wise and experienced hands. The people all over the State demand the construction of more railroads, and will not approve anything which will cripple their chances for their erection. I will vote for the amendment of the gentleman from Lycoming (Mr. Armstrong) because it is more elastic than anything else which has been presented.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Somerset (Mr. Baer) to the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment to the amendment was rejected.

Mr. ARMSTRONG. Mr. President: The extreme difficulty of this subject is very apparent. I suppose every member on this floor accords to the Committee on Railroads the credit of the highest consideration and integrity in everything which they have presented for our consideration. The numerous amendments suggested clearly indicate the inherent difficulty of the question. I have given this subject a good deal of reflection and am prepared to offer an amendment which in my judgment meets the only difficulty which re-

ally calls upon us for a constitutional provision.

I ask the attention of the Convention for a few minutes and I will briefly indicate what I believe to be the real issue, and I can do so better by an illustration than by mere abstract statement.

Suppose two parties desire to ship freight from Chicago, one to Pittsburg and the other to Philadelphia. It is wrong that he who wants to ship to Philadelphia shall get his freights for a less sum than he who wishes to ship the same cargo to Pittsburg. By the same rule it is wrong that if one party desire to ship to Philadelphia and another party desires to ship to New York, the railroad company shall transport that freight right through Philadelphia to New York and deliver it there for less than they will deliver it in Philadelphia. It is wrong that a railroad company should undertake to ship freights as a common carrier and transport freights as they do, right through the town of Williamsport, for instance, over the Philadelphia and Erie railroad, upon the same train, and charge more for delivering such freights at Williamsport than to carry it through to Philadelphia, two hundred miles further? All this is wrong. I believe it is wrong in principle, and injurious in the end to the best interests of the railroad company, and is a discrimination against the interests of the State which we are called upon by constitutional provision to prohibit.

This I believe is the evil which it is our purpose to strike down directly, pointedly and unmistakably, by a prohibition which shall be in such terms that it shall not be open to doubtful legal construction, which shall be too plain for the railroads to mistake, so plain that the way-faring man, though a fool, need not err therein.

My objection to the amendment pending is that it provides that a higher charge shall never be made for a shorter distance than is made for a longer distance. This is not always practicable. It limits and controls unnecessarily the discretion of the transporting company both within and beyond the lines of the State. We have just the same interest in every part of the State in allowing transportation companies the largest possible discretion in competing for freights which are without and to be brought within the State. To illustrate: At Chicago the Pennsylvania railroad meets an intense competi-

tion which compels the company to carry freight from that point to the seaboard, either at New York or Philadelphia, at the very minimum of rates upon which, if they make any profit, it is as they constantly represent, a very small profit indeed. The reason of it is that the New York capital which controls the rival routes to that point would rather have the commercial enterprise dependent upon such transportation centered in New York, and get less dividends upon their railroad stocks, than to have that freight diverted to another and a rival city. But this competition is not met with at every point along the line of the railroad. For instance, at Cincinnati they have sharp competition, but not so severe as that they meet at Chicago. It is a shorter distance, but it is not, therefore, right that the railroad company should be compelled to transport from a point where there is not such destructive competition at the same rates that they are compelled to receive from points where the competition is intensely active, and where, if they do not reduce their freights to the nearest minimum, they cannot receive the freights at all.

This section, then, is too broad in that it limits unnecessarily the discretion of the company at points beyond the State. We have no interest in that. Our interest is, in common with the railroads, to draw within the State whatever freights we can transport from all points beyond the line of our State.

This being so, what is the point at which we should direct our restrictions? It is that the railroad company shall not charge more for delivering freights at any one point in the State than they could charge for carrying them ten, twenty, fifty, one hundred or three hundred miles further. Nor can the railroads justly complain of this, for if they can transport to Philadelphia for a certain fixed rate or aggregate charge they surely cannot complain that by a constitutional provision they may stop that freight when required one two or three hundred miles short of that destination and yet collect precisely the same amount for transportation.

In view of this I have drawn an amendment which I will say I have drawn with great care, and I will further add, with exceeding great difficulty, for I found it extremely difficult to express. I propose, then, to offer this amendment, to come

in after the word "thereof," in the fourth line:

"Persons and property transported by any such company shall be delivered at intermediate stations within the State at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station."

I believe that covers the whole ground, so far as it is judicious for us to restrict the operation of railroads, which must, in spite of whatever restrictions we may impose, be mainly controlled by the laws of trade. It prevents the Pennsylvania railroad from taking freights at any point west and refusing to deliver it at Pittsburgh or Williamsport or Harrisburg, and receive for it the same money that they would receive if they carried it through, over the same line and past these points, to Philadelphia. I am not aware of any other great evil to be complained of. The amendment I propose operates to the same effect within the State. Transportation companies could not take up freight at Pittsburgh and carry it ten miles and charge more for it than they do for carrying the same freight twenty miles. They could not take freight at Pittsburgh and carry it to Altoona and charge more for it than they would to carry the same freight to Harrisburg. The language is broad enough to cover all transportation within the State. It is purposely expressed as it is to prevent any interference with the discretion of the company in seeking freights which they are to procure beyond the State line.

Mr. KAINE. I desire to ask the gentleman a question with his permission. I do not understand him exactly. Does he mean the railroad company may charge the same for carrying the same class of freight from Pittsburgh to Greensburg that it does from Pittsburgh to Philadelphia?

Mr. ARMSTRONG. I say that they shall not charge more, but I have not in this section undertaken to limit their discretion as to the rates per mile between any given points. This we could not safely do.

Mr. FUNCK. Does the gentleman make any provision as to drawbacks in his section?

Mr. ARMSTRONG. No, sir, there is nothing in the section that proposes anything about drawbacks in direct terms.

Mr. FUNCK. There is where the trouble comes in.

Mr. ARMSTRONG. But it would indirectly be involved because any system of drawbacks which would reduce the freight for a shorter distance below what it charged for a longer distance in the same direction would be in violation of this section, and no indirect and evasive method of that kind would be tolerated by the courts.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. ARMSTRONG. I only desire to say a very few words that I may finish what I have to say on this subject. ["Goon."] I certainly shall endeavor to be brief, but it is a question of such exceeding importance that I think we ought to discuss it at length.

The PRESIDENT *pro tem*. The Chair called the time because of the rule only.

Mr. ARMSTRONG. I recognize it, and it is with great propriety that the Chair did so, and it is with great reluctance that I venture to trespass even for a few minutes longer. I shall not discuss the question further, but will read the section as it will stand if this amendment be adopted:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof."

The gentleman from Pittsburgh (Mr. T. H. B. Patterson) introduces the word "between," which I think is not of any especial importance in that connection. But that part of the section, I think, is of value, because it provides in general terms that there shall be no discrimination against the people of the State, and that far it is wise. With this amendment added to it I believe it covers every important abuse complained of by the people on the part of the railroad companies.

Mr. SHARPE. Would this amendment allow the railroad companies to carry freight from Philadelphia to Chicago for less than they can carry it to Pittsburgh?

Mr. ARMSTRONG. I do not think it would. I am hardly prepared to express a positive opinion without further consideration, but I think it would not.

Mr. SHARPE. If a manufacturer in Chicago manufactures the same goods as a manufacturer in Pittsburgh, why should he be allowed to transport his goods at a less rate than the manufacturer in Pittsburgh, and thus be enabled to undersell our own manufacturer?

Mr. ARMSTRONG. There is a difference in distance of about seven hundred miles between Chicago and Pittsburg and Philadelphia. If the railroad company should do that thing it would be only to a limited extent; but I would ask the gentleman whether or not it is in our power to control it if we would, as being beyond the limits of the State? Besides, it would be limiting the discretion of the railroad company in that regard to a degree which would render our interference dangerous without necessity, since no considerable abuse has been or is likely to be developed in that direction, and if it did it is fully within the power of the Legislature. We have no difficulties of that kind which are of practical effect, and I believe that under a fair construction of this section it could not be done. But certainly this amendment would cut up by the roots that great evil which the people do complain of, that freight is carried right past their doors, hundreds of miles beyond the point where they desire to have it delivered, and they cannot, even by paying the same rate, get it delivered at such intermediate destinations, but it must be carried one or two hundred miles further and then shipped back. This is wrong. I submit the amendment, and I believe it covers the ground as fully as in any constitutional provision it is safe to go. Should other abuses, not now foreseen, arise, they can be safely dealt with by the Legislature, and under such legislative securities as we have provided I believe it will be wisely and safely vested there.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lycoming (Mr. Armstrong) to the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson) which will be read.

The CLERK read the amendment to the amendment, which was to strike out all after the word "thereof" and insert:

"Persons and property transported by any such company shall be delivered at intermediate stations within the State at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station."

Mr. LILLY. Mr. President: I do not desire to hamper this amendment or to tie it up in any way by anything that I may say or do; but I wish to impress upon the Convention the fact that this amendment does not cover the whole

subject as the gentleman from Lycoming thinks it does. There is another case which I think is more important to be provided for than any yet spoken of, which has been left out of sight. For instance, suppose I go to Erie and buy a cargo of Lake Superior iron ore, and propose to carry it by rail to the Lehigh valley to be smelted, without asking anything about freights, but take the schedule price expecting to pay it, and I do pay it. My neighbor, who has a furnace alongside of me, goes to Erie and buys his cargo, but he goes to these railroad companies and obtains a special rate, and gets it carried for half the freight to the Lehigh valley that I do, because of that arrangement with the companies. His ore is smelted and his iron comes in competition with mine in the market, and he is able to undersell me. I think that is a point that ought to be guarded against. I do not think the railroad companies ought to be allowed to make that sort of discrimination, but it is done every day. As I said some time ago when this subject was under consideration, that is the main evil complained of on the Erie railroad. There is hardly a thing carried on that railroad to any extent that is carried by regular schedule. The freighting is in the hands of a few parties who control the whole thing to the exclusion of the general public. Now, I take it these railroads are for the general benefit of the people. I have always been friendly to the railroads, and feel so to-day, and would not do the first thing to cripple them; but I think if we are to make an article on the subject of railroads at all, we ought to restrain them from doing just such things as I am speaking of. If it were left to me, I would make an article on railroads that would only contain a couple of sections that would be much shorter than this, and leave the whole matter to the Legislature to fix by general law. But if this amendment carries I hope an amendment to it will be made providing:

"That no discrimination shall be made in favor of any parties in carrying freight of the same kind the same distance, by drawback or otherwise."

The PRESIDENT *pro tem*. That cannot be offered at this time.

Mr. ARMSTRONG. I find that in the latter part of the seventh section, as printed, there is a proviso saving commutation tickets, &c. I want that to go in,

and if the amendment should be adopted I propose to add that at the end of it.

Mr. CUYLER. Mr. President: I quite agree with the delegate from Lycoming, who offers this amendment, in any words he may say of personal respect and regard for the Railroad Committee, and yet I cannot but express regret, as a member of this House, that the distinguished President of this Convention, in constituting that committee, carefully excluded from it, so far as one may judge, in his selection of members, gentlemen in this House who had experience and knowledge of the particular subject which was referred to that committee; but, of course, the committee is not blameable for that. But with profound respect for that committee, they are—I use the word in no offensive sense whatever—censurable for one thing, and that is that they did not seek, at least, the benefit of the experience and the suggestions of those who could have enlightened them upon the subject committed to their charge. In other words, I complain that in a city that abounds with men of the purest character, the loftiest patriotism, and the largest intelligence upon this subject, this committee did not invite at least an expression of the views of those gentlemen. Why was it that such men as Mr. J. Edgar Thomson, Mr. Thomas A. Scott, men who have served this Commonwealth and this country grandly, were not at least invited by this committee to give them the benefit of an experience so vast, a patriotism so large as theirs, and a love for this State and for this city that is not surpassed in the bosom of any citizen of this Commonwealth? Why is it that we, a body composed almost entirely of lawyers, sit here to-day to legislate about a question that is outside of the pale of our ordinary experience, while within sound of our voice there dwells that enlightenment and experience and knowledge that would largely serve us, and we are shut out from it?

Now, sir, I claim for the gentlemen to whom I have alluded, whose experience and knowledge would have been largely valuable to this body, as great intelligence and as pure patriotism as can possibly be predicated of any gentleman here; but I cannot speak of one of those gentlemen particularly—I might say of both—without emotion. I cannot suffer myself even to speak of Mr. Thomson, the President of the Pennsylvania railroad company,

without an emotion of gratitude to him as a Pennsylvanian and pride and glory as a citizen of this Commonwealth in the fact that another State has not robbed us of the services and the ability and the capacity of that man, for they would have valued them, though we do not; a silent man to whom nature has almost denied the power of speech, and yet who has written his thoughts on the face of this Commonwealth in lines of vast internal improvement, bridging rivers and filling valleys and subduing mountains to make a highway for the trade of this State, that we might be bound to our sister Commonwealths and might discharge our duty not as Pennsylvanians merely, but as members of a grand Union, to a whole country. Not circumscribed in our patriotism by the narrowness of mere State lines—but with a broader view and a grander conception of our privileges, our duties and our obligations, rising to the contemplation of our relations, not merely as citizens of Pennsylvania but of the United States.

Now, I have to say to this Convention, after a conversation with that gentleman and with Mr. Scott, and with other railroad men, that the subject which we are handling to-day, with issues so vast to the prosperity of this Commonwealth, is one in regard to which those gentlemen declare that, with all their experience, they are not competent to write a constitutional article upon and feel a conviction that it will not work ruin to the State. I mean to say that we are in the infancy of railroad science, dating back but forty years in this country since the first short line of railroad was opened, with every year and every month developments of some new principle and some new rule, so that what to-day may seem the height of wisdom will to-morrow be apparent to the intelligent mind as the supremest folly and absurdity. And yet we, inexperienced, however pure in our motives and however intelligent in our ordinary avocations, sit here to write this inflexible law in the Constitution, not only without the intelligence and experience which have been acquired by men like these, but absolutely shutting them out from us, excluding them from us, not seeking them at all, not availing ourselves of their experience and profound knowledge of the subject to any extent whatever. I say, Mr. President, that in the ordinary pursuits of human life such conduct as this Convention pursues on this question

would be called the very height of folly and absurdity. When we desire to deal with a subject that is new to us in the ordinary experience of life, we seek the benefit of the intelligence and information of those who have trodden in the path in which we desire to walk, and who can give us the results of an accumulated experience. That is the ordinary rule that guides all intelligent men; and yet we, intelligent men, on this question of vast and overwhelming importance are shutting it out and excluding it from us altogether.

So much, Mr. President, by way of general remark. I say fearlessly to this Convention that any effort on the part of this Convention to write an iron law in this Constitution that shall go more than one step, will be the height of folly and infatuation. All that we can do is to come down to principle. That which we rest on solid principle, which the experience of mankind confesses to be principle, we may rely upon. The moment we step beyond that, to expediency, we step in the dark; and what the ruin may be that is to follow that step no human sagacity can predict.

Now, what step can we take? What has the experience of mankind shown of the great question which underlies this article? It has shown, with reference to human affairs, that the proper protection of society is to be found in a large, healthful, untrammelled competition. What matters it that men like Mr. Vanderbilt, of New York, or Mr. Astor, or others that might be mentioned, or Mr. A. T. Stewart, have been enabled to amass fortunes that run up to forty or fifty millions of dollars, without danger to a free people, while if such fortunes accumulate in the hands of a corporation gentlemen are filled with horror and suspicion, when they are not so when those fortunes are in the hands of an individual? Simply because society is protected by the law of a healthful competition. If an individual engages in business and charges an unreasonable price for his goods, we all know that some other party will go into that business and bring his price down, by the law of a healthful competition. If an individual deals unfairly, or with lack of integrity or justice in his transactions with his fellow-man, we have no fear of the result. Why? Because we know that side by side with him will spring up some other man of business who will be

actuated by integrity and honor and high principle, and by a healthful competition he will remedy the unreasonable charges of the other. And I ask gentlemen to tell me what law of trade is there, what law of commerce is there, that does not apply with just the same force to a corporation that it does to an individual? Why is it that if a corporation deals unjustly, that if a corporation charges unreasonable prices or is oppressive upon the masses of the people, it is not at once brought to its proper place by the operation of the simple law of free and healthful competition.

What then do we want? How far can we go with safety? We can go with safety just so far as this, that we may write into our Constitution that it shall be the absolute right of the citizen to associate himself with his fellow-citizens and build a railroad or transporting line when he will, and where he will, and on what terms he will, consistent with the general safety of the public; so that if it be true that the Pennsylvania railroad company, or any other railroad company, fails to be just to the community or oppresses them with unfair and unreasonable charges, the injured community may associate its capitals together and may plant side by side with it a rival line that will destroy its unreasonable charges and bring it down to a reasonable state of things by reasonable, fair and healthy competition. Here is a panacea, and it is a panacea for all the ills that are at least supposed to afflict the State in this direction. A panacea is to be found in a constitutional provision that shall write into our fundamental law the law of the largest and the healthiest competition, so that when corporations fail to do their duty to the public, the public may have the same self-protecting power against their wrongs that it has against the wrongs that are inflicted upon it by anybody else. That far we can go, because that far experience has taught us that we are stepping upon the foundations of eternal truth and justice. But when we go a step further than that we are inflicting a wrong upon the community, and a wrong upon ourselves, or at least stepping in the dark when we cannot see the depth of the abyss into which we may be plunged.

I desire to say a few words in regard to the amendment of the gentleman from Lycoming, (Mr. Armstrong,) which is the more immediate question before the House. I have the greatest respect possi-

ble for my friend, but his amendment must, of necessity, fail to accomplish the purpose at which he aims. He asks this House if two individuals wish to ship from Chicago, one to Philadelphia and one to Pittsburg, why the man who is to have his goods carried to Pittsburg shall be required to pay as large a price as the man who desires to have his carried to Philadelphia, and he says to this House: "That thing is wrong; that thing is wrong in principle; that thing is manifestly unjust and unfair and unreasonable." So, at a hasty glance, it is; so, to an imperfect comprehension, a wrong seems to be wrapped up in that proposition; so, on the first statement of that proposition to an ordinary man, it is a gross and positive wrong; but is it so in point of fact? Let us see.

Chicago is a point of union for several competing lines, and these competing lines are emancipated from the control of the State of Pennsylvania. We cannot say to them: "You shall carry at a given figure." If it were possible to have a compact between the different States of the Union, whereby this law that we seek to write into our Constitution in the shape of the amendment of the gentleman from Lycoming would be written in the laws of other States through which these competing lines run, then I should not object to write it in here; but until you can accomplish that result, I will show you that it is altogether wrong and works out precisely the opposite of the consequence which the gentleman from Lycoming contemplates.

Let us see. An individual who desires to ship the same article to Philadelphia which another individual desires to ship to Pittsburg, and who is charged the same price for the Philadelphia shipment as is charged for the shipment to Pittsburg, has at Chicago the choice of several different lines by which he may ship, only one of which goes through the State of Pennsylvania. He says to the Pennsylvania railroad company: "If you will carry my article to the city of Philadelphia on the same terms that the New York Central railroad will carry it, I will give it to you." If the Pennsylvania railroad company does not carry that article on the same terms, the New York Central railroad carries it; Pennsylvania does not get it, and the freight is carried by the New York Central railroad, which takes it around to New York and sends it by

water to Philadelphia and puts it down at the same price that would have been charged if the Pennsylvania railroad had carried it, and which is charged to the Pittsburg party.

Suppose the Pennsylvania railroad company refuse to carry it, is it any benefit to the Pittsburg party?

Is Pittsburg any gainer by reason of our refusal or of our inability to carry that article? Not in the slightest degree. The Pittsburg party has not received his freight any cheaper by reason of that circumstance. He has not been benefited one single iota by reason of it. He has had his commodity carried from Pittsburg to Chicago at a stipulated price, and he has not prevented that other commodity from being carried from Chicago to Philadelphia at the same price at which he gets his carried to Pittsburg. Nay, more, the Pittsburg man has been damaged by preventing the carriage per the other party to Philadelphia, because in case the Pennsylvania railroad company are able to carry that article from Chicago to Philadelphia, making any profit, no matter how small, it is gaining something toward a fair dividend for its stockholders, and to that extent it is relieving the burden of the railroad company which it has to lay upon its local freights in order to return to its stockholders that dividend on its capital which is their right, and to which their invested capital is fairly entitled.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. STEWART. I move that unanimous consent be given the gentleman to continue.

The PRESIDENT *pro tem*. The Chair hears no objection.

Mr. CUYLER. I thank the House for its courtesy and will continue, very briefly, what I have to say.

This is a great practical question. I believe I understand it, and if I fail to demonstrate it to this House, it must be from my own incompetency and not the lack of truth in the propositions I desire to present.

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

Mr. CUYLER. If the gentleman will allow me to follow my present current of thought, at the close I will answer any question he or any other gentleman may desire to ask me.

Mr. FUNCK. Very well.

Mr. CUYLER. In 1846 the State of Pennsylvania incorporated the Pennsylvania railroad company. So scarce was capital and so impoverished were our great cities that the city of Philadelphia alone—oppressing her inhabitants by this burden—had to subscribe five millions of dollars to build that road, and patriotic citizens went from door to door in the city of Philadelphia and solicited individual subscriptions to shares of stock from porters, clerks, nay from very servant-girls, to build that road. You said, you the Commonwealth of Pennsylvania said, in the charter of that company: "If you will build this road and put your money in it, you shall have liberty to charge a price not exceeding so much for each passenger and for each ton of freight which you may carry over that road." Thus the road was built. It was built with a grand and lofty purity which has not been surpassed in the establishment of any public work in the world. I utter these words and challenge denial as I say them. It was built in the interest of this Commonwealth, and when I point over the vast State studded over with prosperous cities and villages, to deserts that are now blossoming like the rose and the whole land covered with the fruitage of marvellous prosperity, I point to that which is conclusive proof that it has done that which it was established to do. Nay, more, Mr. President, sitting as it has been my fortune to do, alongside the men who have guided the destinies of that road, as a professional adviser, there are no words in this language which can overstate the profound conviction, which I utter from the bottom of my heart, of the purity, the dignity and the patriotism which have actuated those gentlemen in the administration and in the extension of that road.

I have to say, Mr. President, that within my personal knowledge the Pennsylvania railroad has always insisted upon the doctrine that the city of Philadelphia was fifty-nine miles nearer to the great west than the city of New York, and that no line could be built to the great west which did not cross our State, and which, therefore, was not bound to concede to our State that fact, that we were fifty-nine miles nearer to the great west than the city of New York was. And I say it as a fact within my knowledge, that in one year did the Pennsylvania railroad sacrifice \$900,000 by carrying trade at less than cost until it broke down the weaker lines

running from the city of New York that refused to acknowledge and submit to that great principle which has been a cardinal doctrine of that road in its administration always.

Now, this road has had in view as its cardinal duty always—I ask gentlemen to bear with me and to accept my statement of that in its broadest sense—this road has had in its view always the fact that its highest duty was to the Commonwealth of Pennsylvania and to the trade and the business of this Commonwealth. While it has reached out into the far west, and touched the Pacific upon the west and the Gulf upon the south, that it might bring the treasures of the nation within the bosom of our State and lay them here at the feet of our people to minister to their enterprise and promote their prosperity, it has gone beyond the boundaries of this State and taken trade from the west and from the south only when it could carry that trade at some profit and thereby be enabled to carry cheaper for the citizens of the Commonwealth herself. And as a practical result to-day, confessedly the Pennsylvania railroad company carries the local trade of this State at an average of only one-half the price that her charter permits her to charge. It is because of this trade from beyond the boundaries of our State, it is because of the profit that she has been able to earn from the trade outside our boundaries, that she has been able to disburden the local trade of Pennsylvania to the extent of one-half the charge which the law permits her to impose upon it.

What then are you proposing to do? You are proposing to say to the Pennsylvania railroad company, "you shall give up your freight which comes from beyond the boundaries of the State." What then? Why, as a matter of course she must put up her charges upon her local trade nearer to the maximum price that her charter permits her to demand in order that she may earn a fair return for the capital she has invested. And I warn gentlemen that just in proportion as they shall burden that extra-State trade by imposing the local charges upon it, will they destroy the prosperity of this Commonwealth by taking away from it the trade that comes from beyond its boundaries and by planting upon the local trade of the State an increased and heavier burden; for I say to gentlemen, every dollar that you take off the extra

State trade of the road you impose upon the local trade.

Now, I ask gentlemen to trust something to the purity and the integrity and the wisdom of the men that govern that great enterprise. I ask them to see in the vast prosperity of this Commonwealth and in its progress and its glories, the city of Pittsburgh on its western boundary and all these similar villages that stud our whole State over—I ask them to see in all this some proof that the men who govern this enterprise are above small and sordid and selfish motives and do grasp the interests of the whole Commonwealth and seek to promote them. I do ask gentlemen here to pause and consider, and not blindly shut their eyes to the experience that these gentlemen have accumulated, driving blindly over all that is before them, adopt a policy the effects of which they can but imperfectly comprehend themselves and which men of so much larger grasp and greater experience see will be simply ruinous to this Commonwealth.

Therefore, Mr. President, I entreat the House to vote down the section bodily. There is no amendment which you can write in it that will not work mischief and probably be ruinous to this great Commonwealth. I entreat you not to say to this city of Philadelphia, which has put \$5,000,000 of her capital into this enterprise, I entreat you not to say to this great and prosperous Commonwealth, that you will blight and paralyze the prosperity which meets your eyes everywhere, and which has been the result of the very system that you are seeking by this section to strike down and destroy.

Now, Mr. President, I have been betrayed into lengthy remarks that I had not dreamed of when I rose, but I could not but express the feeling that has been pent up in my bosom for days as I have listened to the discussion of this question. I not only feel, but I know, that this Convention walks, so far as this great subject is concerned, along the crumbling edge of an abyss profound, whose depth no human eye can measure and into which they will plunge the Commonwealth and be overwhelmed. I ask this Convention not to drive the chariot of the sun unskilled in such an enterprise. I ask this Convention to say: "We will go just so far as experience has shown us sound principle lies, and we will not speculate or substi-

tute our own crude thoughts and fancies for solid principle." I ask this Convention to say that just as the law of individual enterprise is, that if it be unreasonable, if it be oppressive, if it be unjust, competition is the remedy that will come to our relief, just so it is with regard to corporations, and that all we can do on this great question is to strike out the article as we have written it, the whole article as we have written it, and put in its place a provision that shall in the largest, in the broadest, in the fullest and most unrestrained way arm the citizens of this Commonwealth with a power to build railroads and canals when, where and as they please, so that under the fair and healthy law of competition they may break down and destroy the power of any corporation that forgets its duty to the people that gave it birth and oppresses the interests which it was created to nourish, cherish and promote.

I thank the House for the indulgence they have given me.

Mr. ARMSTRONG. Before the gentleman takes his seat, I should like to make a single suggestion. I should like to know from him how the interests of the railroad company can be injured if they get one hundred dollars for carrying a certain amount of freight to Philadelphia and get the same one hundred dollars for cutting it off at Pittsburgh, three hundred miles short of Philadelphia.

Mr. CUYLER. I will answer the gentleman. The treasury of the company is injured by this circumstance: If they did not earn the small profit they made on that which they carried through to Philadelphia, they would have to charge against that which was carried to Pittsburgh in addition to the one hundred dollars, the amount of profit they made on the carriage to Philadelphia. In other words, they would have had to charge the Pittsburgh man say one hundred and five dollars for that which they did carry for him for only one hundred dollars. That is the answer. Compel the company to give up the profit, however small, it earns from competing points beyond the State, and you compel it to add at least an equivalent amount to the burthen placed on local trade. You withdraw from the commerce of our State and the industries of our people the articles which would be brought into our State from places beyond its limits and you subtract from the revenues of the Commonwealth the propor-

tionate amount of tax on gross receipts, or to be more accurate, you take thus much off from citizens of other States and place them on our own.

Mr. LANDIS. Mr. President: It is with great reluctance that I rise this morning to say what I have to say about this question. I am the more reluctant because it so happens that in placing myself on the record with regard to this question, I follow closely upon the gentleman from Philadelphia, (Mr. Cuyler,) who has so enthusiastically and so earnestly defined his position on the subject, as he has so often done before.

I am not a member of the Railroad Committee. I do not stand here this morning to explain any of their actions. I cannot account for any of the impulses in their breast which led them to the conclusions which they have reported to us. I stand here as a citizen of Pennsylvania, representing a portion of her people, and seeking as best I can with the convictions of my conscience and with such promptings on the subject as my judgment may furnish, to discharge my duty towards those people.

Now, sir, had one happened in this Hall casually this morning, and had not listened to all of this debate, after hearing the earnest and impassioned appeal of the gentleman from Philadelphia, he would have supposed that here were assembled a body of men who were desirous of affixing upon the corporations of Pennsylvania a provision which must be simply ruinous. The burden of his speech has been as though this Convention sought to do that which must forever nullify the objects for which these corporations were created, to affix upon them such restrictions that hereafter they could not exist. I contend that that has been the burden of his argument, because if what he says is true, the great corporations of Pennsylvania, if this provision should be incorporated in the Constitution, could never exist.

He has said that that committee should have invited Mr. Thomson and Mr. Scott to attend its deliberations. Perhaps they should have done so. Had I been a member of the committee I would gladly have seen those gentlemen present. But, sir, they were not so invited, and I am not here either to apologize or explain. The gentleman from Philadelphia says that in mentioning those names he feels an "emotion" of some kind which he has

not explained, but an emotion, are we to presume, which influences him in the course that he takes here? Now, sir, I am not impelled by any such emotion. No man feels a more respectful regard for those distinguished names than myself, but the name of no one man or set of men impels me to the discharge of my duty when I come to discharge it in the light of my convictions and in view of my responsibility.

What do we find? We find in regard to every section of this article that the gentleman is opposed to it. Not one of them finds any sympathy in his bosom; and were we to consult his desires, were we to vote as he has uniformly voted up to this time, and as I presume he will vote to the close, we would not have in the Constitution of our State a single article in regard to railroad corporations. Is this due to the particular "emotion" which the gentleman experienced on naming such gentlemen as Mr. Thomson and Mr. Scott? I presume if the gentleman had happened to have experienced a similar emotion when other articles were under consideration, the State of Pennsylvania, so far as he is concerned, would have no Constitution at all.

Mr. President, I entirely sympathize and agree with all that the gentleman says about the greatness of the Pennsylvania railroad company, not forgetting that there are other corporations that are likewise great, though not so great. I sympathize with feelings of pride with all that may be said in praise of that company so far as its grandeur and its power, considered as mere power, are concerned. But it becomes our duty as citizens of Pennsylvania, as members of a Constitutional Convention, to remember that there may be even in the State of Pennsylvania a power too great, a power which her citizens should not permit to continue, or, if continued, to continue under such salutary restrictions as that that power shall not be dangerous to the rights of the people and the sovereignty of the State itself. Who dare gainsay this proposition? I say to controvert it is to announce that which is hostile to the very principle of our government, and which, if not arrested, will sap the foundations of our State government itself. I say we must rise to the occasion. We must see to it by our votes here that there shall not be, as it were, an *imperium in imperio*: that there shall not be a sov-

ereignty within this State drawing its life and its support from the people which shall rival, yea, rise superior to the power of the people themselves. I hold that any gentleman here who contends otherwise does not manifest that patriotism which he should as a citizen of Pennsylvania.

But, sir, to come more particularly to the question before us, as I have but a few minutes allotted to me, I regard the proposition of the gentleman from Lycoming (Mr. Armstrong) as not at all meeting the requirements of the case. I regard it as an insidious proposition, one which while on its face it might not seem to suit the railroad companies, would in its operation be prejudicial to the interests of the companies themselves as well as to the interests of the people. I have not sufficient time to enter into any elaborate argument to prove that that is so, but I think a careful examination of it will show that that would be its operation, because it would not furnish the remedy which the people desire, and at the same time it might so interfere with the foreign or outside operations of the railroad companies and so cripple them that they would not be able to transport freight and passengers in the manner that they should for their own benefit and for the accommodation and benefit of the people themselves.

There is another objection that I have to it. It will be observed that, by the language of the amendment, it applies to discrimination in freights in the same direction. It does not prevent discrimination on freights which are returning in an opposite direction; I mean between a schedule of rates for freight carried eastward and a schedule of rates for freights carried westward—or northward and southward. Let me illustrate it. Suppose that persons who are engaged in shipping coal in the bituminous region desire to send the coal to Philadelphia or intermediate points; they are charged a certain rate. Then those who are engaged in the shipping of anthracite coal in the eastern region are permitted to ship coal in various directions. In shipping coal westward, if the railroad companies are not prevented from discriminating, they can ship anthracite coal to the bituminous regions at so much less rates as entirely to destroy the home business—the local trade of the bituminous operators. I give that as an illustration, and that illustra-

tion is founded upon fact. I stated before, on this floor, that bituminous coal, which had been shipped for many years for a distance of twenty miles, and the operators enjoying the benefit of a home market, was last year interfered with by the shipment of anthracite coal two hundred and twenty miles off, so that the trade of the operators in bituminous coal was taken from them, although the coal which was put in the market in competition against them was brought a distance of two hundred miles further. An evil of that kind the amendment of the gentleman from Lycoming would not reach.

In regard to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson) as a substitute for the section, whilst in some particulars it is not as I would have it, because I do not know that in all respects it protects the corporations themselves to the extent I should like to see them protected, and because also it does not furnish that adequate protection to the shippers in the State of Pennsylvania which I would have. Yet in view of the great difficulty, in view of the various conflicting interests, in view of the exceeding embarrassment which all gentlemen have experienced who have attempted to furnish any proposition to meet the difficulties of the case, I am willing at this stage of the question to accept that amendment.

There is this fact to be remembered in the determination of this question: That the settlement of it as regards corporations bears no sort of analogy to the settlement of questions of trade and commerce between private individuals. It must be remembered that railroad corporations obtain their life and existence from the State, and the State has the right to affix to that corporate existence such terms and conditions as she sees proper to impose; whereas, so far as the rights of private individuals are concerned, they are left to exercise them as they may see proper, and as they may be legitimately affected by the laws of trade, and therefore there is no analogy in the two cases. Gentlemen are incorrect when they say that the same rule should be applied to the transporting companies of the State that is applied to the private individual who is engaged in trade or business. Corporations have not all the rights of individuals, nor individuals all the privileges of corporations. Therefore, when this constitutional provision requires that

there shall be certain enactments which may seem to be rigid and binding in their character, it is not for the professed friends of corporations to complain of there being an iron rule, because it is only under the effect and power of some rule of that kind that transporting companies are or should be permitted to transport passengers and freight, and otherwise perform their functions as corporations and as servants of the public.

Now, sir, I have not desired to detain the Convention unnecessarily, but I was desirous of calling the attention of the Convention to the amendment of the gentleman from Lycoming. I hope that amendment will be voted down, as I said before, because it does not meet the case either as the railroad companies would have it, on one hand, or as the people would have it, on the other. The amendment of the gentleman from Allegheny, whilst faulty in some particulars, and whilst not meeting the requirements of the case to that extent that all right and fair-minded men should desire, I am perfectly willing to accept, in view of the difficulties surmounting the question; and when the vote is taken I shall support it.

MR. CLARK. Mr. President: I understand the amendment of the gentleman from Lycoming (Mr. Armstrong) to be the question now under consideration; am I right in that?

THE PRESIDENT *pro tem*. That is the question now before the House.

MR. CLARK. Then I propose an amendment to that amendment.

THE PRESIDENT *pro tem*. The pending question is an amendment to an amendment, and the motion is not in order.

MR. CLARK. I will then suggest an amendment or modification which I think the mover of the amendment to the amendment will accept when it is stated.

The proposition of the gentleman from Lycoming (Mr. Armstrong) provides:

"That persons and property transported by any such company shall be delivered at *intermediate* stations within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station."

What are we to understand by an *intermediate* station? All stations between the termini of any railroad might be called intermediate. And I think that would be the reasonable interpretation of

the term intermediate in this amendment. If this is a fair construction, and I think it is, the amendment proposes that "persons and property transported by any such company shall be delivered at all intermediate stations, (that is stations situate between the termini of the road) within the State at charges not exceeding," &c., &c.

This would cover and prohibit any discriminations against all freight and passengers to be *delivered* at such intermediate stations; but what of freight and passengers *from* these intermediate stations to be transported to the termini of the road? All this class of persons and freight is unprovided for by this amendment. I therefore suggest as a modification of this amendment to strike out the word "intermediate" and insert the word "any." The amendment will then read:

"Persons and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction, to any more distant station."

MR. ARMSTRONG. I have listened with much interest to the suggestion of the gentleman from Indiana, (Mr. Clark,) and I believe that this criticism is well founded. I think it does enlarge the operation of the section within the intention wholly, and I will therefore accept his modification.

THE PRESIDENT *pro tem*. The amendment to the amendment will be so modified. The question is on the amendment to the amendment, as modified.

MR. COCHRAN. Mr. President: I have not spoken on this amendment and am very reluctant to say a word on it now, but I feel impelled to do so by a sense of duty.

The gentleman from Philadelphia, (Mr. Cuyler,) who discoursed so ably on this question to-day, commenced his address by a reference to the action of the Railroad Committee. He censured that committee for not having called before them certain gentlemen who, he supposed, would be able to give them the information which they did not possess, and he said they were inexperienced, however upright in their intentions, and they should have called for such assistance.

Now, sir, what did the gentleman's conclusion amount to on that subject? What benefit should we have derived if we had

done what he has suggested? Why, almost in the next succeeding sentence he went on to tell us that those gentlemen could have given us no information that would have helped us in this case; that the gentlemen to whom he referred had considered this subject, and had said that it was so difficult a question that they were not able to comprehend it in all its details themselves; and at last the conclusion was arrived at in the minds of those gentlemen, and in the mind of the learned gentleman from Philadelphia, that there was nothing that this Convention could do, or ought to do, or was competent to do, except simply to pass a single section allowing a general railroad law to be enacted by which every man or company or association of men might make railroads where they pleased. Now, sir, if it comes to that, whatever fault might have been imputed to the committee, if they were justly chargeable with such, we could have derived no benefit from such consultations as he has suggested here. I do not think that committee were called upon or required to enter into any such consultation. The question here was a question of principle, a question which involved the interests of the people of Pennsylvania, and which sprang out of the fact that the very gentleman whom he wanted us to call into council had imposed the discriminations of which we had complained, and it was not to be expected that those gentlemen would either admit that they had done anything wrong or that there was any remedy for that evil. If those gentlemen had desired to be heard before that committee as other gentlemen requested to be heard before other committees of this Convention, they would unquestionably have been heard, and heard with respect, the respect to which their position and their experience entitled them, but no such application was made, and the committee made no such application to them, and the reason and the futility of doing so are very apparent from the conclusion to which the gentleman from Philadelphia himself arrived in his speech.

It is very easy to say that a panacea for all these evils which we endure is to be found in a general railroad law. It is not so easy, though, when you come to ask an investment of millions of money for the purpose of raising that competition which the gentleman seems to consider the panacea for all these ills. The

corporations of this State, it must be remembered, are the creatures of the State, possessing special privileges from the State, of large aggregated wealth, with great advantages and established privileges; and now simply to say that you are to put the community at large to the necessity, in order to remedy an evil which they endure from these creatures of their own making, of seeking around to find capital for the purposes of investment, and for building up an opposition to another company, for instance, which may have one hundred millions of capital and one hundred millions of bonded debt, is to impose upon the people of this State a burden which certainly this Convention never ought to be called upon to impose, in order that they may be saved from unjust discrimination and unjust rates in this matter of the transportation of their goods.

Mr. President, there is no analogy between the growth of individual and corporate wealth, such as has been drawn here to-day. I have heard no man complain of the wealth which grows up in the hands of individuals. Happily under our institutions we have no laws of entail and primogeniture. As sure as a man dies, as was said by one of the judges of the Supreme Court in this State, in a well-known case, so surely his estates go into the orphans' court. I care not how rich any individual in the State becomes; on the contrary, I am always rejoiced to see industry and enterprise rewarded by the accumulation of that material wealth which is their proper and just reward; but, sir, the aggregation of wealth in incorporated companies is a very different and a very distinct thing. It grows out of special privileges conferred; it is subject to no such disposition at stated times; there is no death to your immortal corporation, and there being no such thing, there is no distribution of this wealth; it remains in the corporation, however it may vary in its distribution among individuals. The corporation is the entity, and the wealth abides there and the power which it confers remains with it, and there is a clear distinction and there is a just analogy between the cases.

Mr. President, I have said before and I repeat that the people of this Commonwealth do complain, and it is apparent from all that has been said here by every gentleman, except one gentleman from the city of Philadelphia that there do

exist these causes of complaint. There is no one gentleman in this Convention who has yet risen to say that there is no such cause of complaint, except the gentleman from Philadelphia, and I apprehend that with all his ability—and it is not disputed—the views of that gentleman must largely be referred to his peculiar associations and the relations in which he stands; and when I say this I say it with no disrespect, for every man's opinions and views are colored by the circumstances in which he lives. We are not apt to look with disfavor upon the things which we do ourselves or the means by which we undertake to accomplish our purpose.

Now, sir, is this Convention determined that it will do nothing in this regard for the relief of the people of this State? The objection to the amendment of the gentleman from Lycoming was struck at once and directly by the interrogation, as I understood it, of the gentleman from Franklin (Mr. Sharpe.) I understood it to be admitted by the gentleman from Lycoming that his amendment would not prevent such a discrimination against the people of this State, as that the labor, the manufacturing productions, the enterprise, the produce of every kind of other States, might not be brought through here at such rates as would discriminate against and even destroy the enterprise and the industry of our own people. It would not prevent the manufacturer of Chicago, as the illustration was, from bringing his goods to Philadelphia, past the very door of the manufacturer of Pittsburg, and putting them in this market at a lower rate for the expense of transportation than it would place the same articles for the manufacturer in Pittsburg in this market.

Now, sir, any amendment which has that practical effect never ought to receive the sanction of this body. What we ask is simple justice; what we ask is fairness of dealing in this matter as regards the citizens of this State. We do not say that we can come down here and lay a line of strict and accurate demarcation. That is not our idea at all. It is not practicable, I admit, to do that. At the best, you can only approximate it, and at the very best this section and the amendment of the gentleman from Allegheny are but an approximation to the right rule. But it is necessary in a matter of this kind that there should be some play given, that

there should be some room for the great transporting corporations of the Commonwealth to arrange their business within certain limits; and the practical limit here defined is that the citizen of the State shall not be put at a disadvantage in comparison with the citizens of other States, and the citizens within the State shall not be injuriously discriminated against as between themselves. That is the whole principle involved in this. It is justice, justice as nearly as you can attain, not exact in all that we should do if it lay in our power, as I apprehend, for the people of the State, but it is all that we can do. We can approach the mark no nearer than that.

Sir, I shall not undertake, and I should not, I suppose, be able to do so, to reply to all the arguments of the gentleman from Philadelphia; but I did want to bring distinctly before the members of this Convention these particular provisions of this section; and I do not think, however ably the argument may be put, as ably as any argument ever was put by any advocate for his clients in any court, that this Convention is willing to consent to the course of policy suggested by the gentleman from Philadelphia, and to surrender everything, without any check, to the corporations of the State, give no relief, whatever, to the people, and pay no attention to their call, because, with regard to this matter, the people have called upon this Convention to act. This report is not the mere spontaneous growth of the Committee on Railroads and Canals. They did not act merely upon their own inward consciousness in preparing something of this kind for the purpose of bringing it before the consideration of this Convention, to manifest that they had a miraculous understanding of all the workings of this great subject. They did not even, in the most particular of these propositions, deserve the credit of originality. As to some of the language, it is an exact copy of that which has been furnished to them by others. They accepted it, because they believed it was intelligible, and because it was as near an approximation as they could get to the exact mark of justice, and with that view they have presented it to this Convention, in the earnest hope that it will meet its approbation and be adopted by it.

Mr. HOWARD. I regret that we are compelled to submit a proposition of this

magnitude and importance to the people of this Commonwealth in so small a Convention. It is a little too small, I should think, for practical purposes, and I am afraid it is too small to act with safety for the people of this State. I have listened to the very extraordinary argument of the delegate from Philadelphia, (Mr. Cuyler,) and it certainly was very eloquent. It ought to have been eloquent because a portion of it was expressing his own particular gratitude to the gentleman to whom, I have no doubt, he is under very great obligations; and perhaps some of the rest of us would be equally grateful if placed in the same circumstances. But the butt-end of the argument, and all there was in it, was this: That if we dared to do justice to the people of Pennsylvania, then they would somehow or other be compelled to fall back upon the original rights conferred in their charter and in some way they would have to crush out our trade in order that they might still compete for the trade of other States. There may be something in that argument that looks as if it amounted to something, but it so happens that there is nothing in it at all. I hold in my hand the report of the Pennsylvania railroad company, sworn to by J. Edgar Thomson, in which he swears that the cost of the carriage of freight is so much per ton per mile, and that at their very lowest rates they make thirty-three per cent., and that is certainly enough.

MR. CUYLER. Will the gentleman pardon an interruption. That thirty-three per cent. has to be charged with all the interest on the investment of the company.

MR. HOWARD. I understand that, but still it is a pretty large profit. If any man engaged in any business manages his affairs with any sort of prudence, out of thirty-three per cent. he ought to meet his expenses and have a little over.

MR. CUYLER. That only realizes a net ten per cent. to the stockholders.

MR. HOWARD. I understand that, too; but I say that at this margin of profit on the lowest rate of freight carried by them they ought to realize and do realize a handsome dividend on every share of stock they have issued, and yet every time we come here and ask for justice we are met by the threat, "if you dare to do justice to the people, we will retaliate upon them by going back to our charter." It happens that so far as the main line is

concerned, they cannot do it. I have read here the act of Assembly that was passed when they got the tonnage tax repealed. There was then a new deal so far as their charges upon the main line are concerned, and they expressly agreed in that act of Assembly to what they call now one of the most obnoxious features of this section, namely: That they shall not charge for a shorter distance more than they do for a greater. That is expressly stipulated in that act of Assembly, and they signed it as a part of the new contract, and filed it in the office of the Secretary of the Commonwealth.

Here it is laid down in this sworn report of the president of the Pennsylvania railroad company that the actual cost of carrying a ton of freight is a fraction less than seven-eighths of a cent. Why, their average charge, with all this competition, is over a cent and one-third, and that is for through freight, and they charge more than that on their local freights, and they say that if we ask them for justice they will be compelled to retaliate upon the people of the Commonwealth. It is not true in point of fact. According to their own showing, they can make on their own rate thirty-three per cent. over and above the cost.

But they say that they must make their discriminations on account of the through passengers. I want to look at that. I have not had the report for 1872 but I have for 1871, and I find that in that year the Pennsylvania railroad carried passengers to the number of four million six hundred and ninety-nine thousand. How many outsiders, for whom such eloquent appeals are made, do you suppose were included in that number? It has been told us that the people of Pennsylvania are to be destroyed for the sake of this outside passenger trade. I have already said that the entire number of passengers carried over the Pennsylvania railroad company was nearly five millions, and out of this number about one hundred and eighty-six thousand were outsiders, not one outsider to twenty-six Pennsylvanians. And these outsiders are to have more favorable terms than the people of the State, and the oppressive discriminations under which we have labored are to be continued in order that these one hundred and eighty-six thousand outsiders may be carried at less rates! There is no necessity for this state of things. This railroad company can

honestly carry the people of this State and of other States for a great deal less money than was originally stipulated as the maximum in their charter. I maintain here that this question does not stand upon the charter as far as that road is concerned, and if it did, I hold that the charter can never be used by the road as an instrument of fraud to crush the industry of Pennsylvania, and it would be so used if they are to be permitted to still keep up the maximum charges fixed in the charter for Pennsylvania passengers and Pennsylvania freights and then to bring New Jersey, Ohio and New York passengers and freights into Pennsylvania at rates so low as to crush out the local industry of this State. Whenever they do that, I have no doubt the courts will step in and say: "This people of Pennsylvania gave you life and vitality and they gave you all the rights you have and you cannot use those rights to crush them." It would never be tolerated.

Then what remains of the gentleman's argument? There is no argument in it. There is no necessity for it. They can carry their freights and passengers at a reasonable price, and they can still make a fair profit and they can do justice to our people, and that is all we ask. We only ask that they shall not discriminate against the people of Pennsylvania. Who would have supposed that we should have been compelled to listen to an able, eloquent and ingenious speech, of very considerable length, to prove that that would ruin the Commonwealth of Pennsylvania, a proposition that if the railroad companies should not be allowed to discriminate against the industries of the people of this Commonwealth, the people of the State will be ruined! Why, Mr. President, the man that makes such an argument as that must have been prompted by some very peculiar arrangement. I myself cannot understand it. It is perfectly right that a man should be grateful; it is perfectly right that he should eulogize Mr. Scott and Mr. Thomson and set them up just as high as he pleases; but there are some people in the State who believe that while Mr. Thomson and Mr. Scott may have done much for Philadelphia, they have done injustice to other parts of the Commonwealth; that they have discriminated against them and stricken down their industries, and they know it. Why, sir, the people of Philadelphia to-day, if they would vote for this proposition,

would be largely benefited in bringing here the coal that makes the gas which lights their city, for they would get it at a far cheaper rate.

This Convention has already struck out of one of the sections of this article the very important clause that the officers of any railroad company shall not be engaged in mining or manufacturing articles to be transported on roads of which they are officers. Yet we all know that the gas coal that comes to Philadelphia is entirely in the hands of a monopoly. No man west of the mountains can engage in this mining business and compete with the gas coal monopoly, because the officers of the Pennsylvania railroad company have possession of that trade, and possession of the transportation. They can make their own special rates to suit themselves, and they furnish themselves with facilities and with their own cars which no one else can procure. Yet in the face of all these facts, with this industry absolutely prostrate and monopolized by these men, and in the hands of the "ring" men of the Pennsylvania railroad company, we are told that if we adopt the simple proposition here proposed to do justice to the great body of the people, it will be the ruin of the Commonwealth. It ought to be the ruin of some of these monopolies, at least so far as to bring them down to an equality with other men. That is all we ask, nothing more, nothing less, than that the railroad companies shall not discriminate against the people of this Commonwealth.

Mr. ARMSTRONG. I now modify my proposed amendment to the amendment by striking out all after the word "thereof," and inserting:

"Passengers and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station."

Mr. T. H. B. PATTERSON. I wish to call attention to the fact that this amendment to the amendment leaves out entirely all that which relates to drawbacks and special rates, and does not provide for excursion or commutation tickets at all.

Mr. ARMSTRONG. I was about to remark that the subject of drawbacks was covered by the section, and that part of it relating to commutation tickets might be added if any gentleman desired it.

Mr. CAMPBELL. I ask for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call.

Mr. HARRY WHITE. I want to know after the remark of the delegate from Lycoming what is the exact state of the amendment.

The PRESIDENT *pro tem*. The amendment to the amendment will be read again.

The CLERK. It is proposed to add these words:

"And no special rates or drawbacks shall, either directly or indirectly, be allowed, except excursion and commutation tickets."

Mr. HARRY WHITE. Does the gentleman from Lycoming adopt that as part of his amendment?

Mr. COCHRAN. I ask that the roll may be called to determine whether there is a quorum present.

Mr. EDWARDS. The yeas and nays will determine it.

Mr. BOYD. I move an adjournment.

Mr. ARMSTRONG. What I propose to add to my amendment is:

"But commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. COCHRAN. I do not know now the exact terms of the amendment.

The PRESIDENT *pro tem*. The Clerk, for information, will read the entire amendment of the delegate from Lycoming.

The CLERK. The amendment to the amendment is to strike out all after the word "thereof" and insert:

"Persons and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. COCHRAN. I understand there is nothing about drawbacks in it. I should like to appeal to the Convention to ad-

journ. The House is thin and it is not fair to take the question in its present condition.

Mr. CUYLER. I quite agree with the gentleman from York. I hope the Convention will adjourn, and adjourn until September.

The PRESIDENT *pro tem*. The yeas and nays have been ordered on the amendment.

Mr. T. H. B. PATTERSON. A call of the House was asked for before the yeas and nays were ordered. I insist on a call of the House.

The PRESIDENT *pro tem*. The yeas and nays will determine whether there is a quorum present or not. The Clerk will call the names of delegates.

The CLERK proceeded to call the roll on the amendment to the amendment.

Mr. MANTOR [when his name was called.] I am paired on this question with the gentleman from Dauphin, (Mr. Lamberton,) who was opposed to the section, and I in favor of it.

The CLERK resumed and concluded the call of the roll.

Mr. CUYLER [after having voted in the negative.] I desire to change my vote and to vote for the amendment, not because I agree with the amendment, but because I think it better than the section as originally written. Then I propose to vote against the section. Therefore I ask leave to change my vote.

Mr. T. H. B. PATTERSON. I object.

The PRESIDENT *pro tem*. Did the gentleman vote in mistake?

Mr. CUYLER. I cannot say that I did, but I would prefer to make that change.

The PRESIDENT *pro tem*. If the gentleman voted in mistake, he has the right to change his vote.

Mr. CUYLER. I cannot conscientiously say that I voted in mistake, but I think it would be wiser to vote for the amendment because I think it is better than the section.

Mr. DARLINGTON. If the gentleman voted under any misapprehension of the effect of his vote, he has the right to change.

Mr. BUCKALEW. I should like to inquire whether we have a rule prohibiting members from changing their votes. Under the general parliamentary law any member has an absolute right to change

his vote at any time before the result is announced. In the Legislature by special rule we have no change of vote, but I do not think that rule prevails here.

The PRESIDENT *pro tem.* I think the gentleman from Columbia is correct, and that the delegate has a right to change his vote.

Mr. COCHRAN. It certainly has been the practice hitherto in this body not to allow the change of a vote unless where a delegate voted under a misapprehension.

The PRESIDENT *pro tem.* It will not change the result, and I think the delegate may change his vote.

The CLERK again called the name of Mr. Cuyler.

Mr. HARRY WHITE. I rise to a question of order, because this may become an exceedingly important matter. ["No." "No."] I claim my privilege of raising the question of order.

The PRESIDENT *pro tem.* What is the question of order?

Mr. HARRY WHITE. My question of order is that the delegate has not a right to change his vote unless he states that he voted under a misapprehension of the question.

The PRESIDENT *pro tem.* Will the delegate turn to the rule wherein that is laid down?

Mr. LILLY. Rule thirty-six.

Mr. HARRY WHITE. I will read it:

"On the call of the yeas and nays, one of the secretaries shall read the names of the delegates after they have been called, and no delegate shall be permitted to change his vote, unless he at that time declares that he voted under a mistake of the question."

I raise the question of order.

Mr. BUCKALEW. Mr. President: My question is answered. I did not know that we had adopted the rule which prevails in the Legislature on this subject.

Mr. HARRY WHITE. It is the common parliamentary practice.

Mr. ARMSTRONG. Under this rule—

The PRESIDENT *pro tem.* The Chair decides that the delegate cannot change his vote.

Mr. ARMSTRONG. I would suggest to the Chair that it is after the names have been called. Until that time it is entirely within the discretion of members. The rules says: "One of the secretaries shall

read the names of the delegates after they have been called, and no delegates shall be permitted," &c.

Mr. HARRY WHITE. I understand the question to have been decided.

Mr. CUYLER. I will not make any change. I learn that there are other gentlemen whose votes were somewhat affected by mine, and it would perhaps be hardly right that I should make the change. I therefore withdraw my request.

The result was then announced as follows:

YEAS.

Messrs. Ainey, Armstrong, Barclay, Bigler, Black, Chas. A., Boyd, Brodhead, Brown, Buckalew, Carter, Clark, Corbett, Cronmiller, Curry, Darlington, Edwards, Elliott, Fell, Fulton, Hall, Lilly, MacConnell, McCulloch, Mann, Niles, Purman, Purviance, Samuel A., Reed, Andrew, Simpson, Struthers, Walker and White, J. W. F.—32.

NAYS.

Messrs. Achenbach, Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bidle, Bullitt, Calvin, Campbell, Carey, Chureh, Cochran, Curtin, Cuyler, De France, Ellis, Ewing, Finney, Funck, Gilpin, Guthrie, Horton, Howard, Kaine, Landis, Lawrence, M'Murray, Newlin, Patterson, D. W., Patterson, T. H. B., Patton, Reynolds, Rooke, Sharpe, Smith, H. G., Smith, Wm. H., Temple, Turrell, White, David N., and White, Harry,—40.

So the amendment to the amendment was rejected.

ABSENT—Messrs. Addicks, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Broomall, Cassidy, Collins, Corson, Craig, Dallas, Davis, Dodd, Dunning, Gibson, Green, Hanna, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lamberton, Lear, Littleton, Long, MacVeagh, McCamant, McClean, Mantor, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Ross, Runk, Russell, Smith, Henry W., Stanton, Stewart, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry, Woodward, Worrell, Wright and Meredith, *President*—61.

Mr. COCHRAN. I move that the Convention adjourn.

Mr. CUYLER. Having voted with the majority, I now move to reconsider the vote on the amendment just voted on.

Mr. TEMPLE. I second the motion.

Mr. CAMPBELL. I call for the yeas and nays.

Mr. HARRY WHITE. I submit that a motion to adjourn was made.

Mr. COCHRAN. I moved that the Convention adjourn.

The motion was agreed to; and (at eleven o'clock and fifty-eight minutes, A. M.) the Convention adjourned until Monday next, at ten o'clock A. M.

ONE HUNDRED AND FORTIETH DAY.

MONDAY, July 14, 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 the proceedings of Saturday last was read and approved.

LEAVES OF ABSENCE.

Mr. S. A. PURVIANCE asked and obtained leave of absence for Mr. Darlington for to-day.

Mr. CLARK asked and obtained leave of absence for Mr. Metzger for to-day.

PROPOSED RECESS.

Mr. D. N. WHITE. I offer the following resolution, and ask that it be laid on the table:

Resolved, That when all the articles adopted in committee of the whole shall have passed second reading the Convention shall adjourn to meet again on the 15th of September, at ten o'clock A. M.

Resolved, That articles passed on second reading be arranged in their proper order by the Committee on Revision and printed in pamphlet form, leaded pica type, with a broad margin, on sized paper, and three copies sent to each member as soon as possible after the adjournment.

The PRESIDENT *pro tem.* The resolution will lie on the table.

EXECUTIVE COMMITTEE.

Mr. NEWLIN. I call up a resolution which was offered by me on the 28th of March, and which is now on second reading.

The PRESIDENT *pro tem.* The resolution will be read.

The CLERK read as follows:

Resolved, That rule twenty-nine be amended by adding a standing committee of fourteen, to be called the Executive Committee.

The PRESIDENT *pro tem.* The question is on proceeding to the consideration of the resolution.

Mr. NEWLIN. That has laid over one day under the rules, and I believe is now on second reading.

The PRESIDENT *pro tem.* Still it must first be taken up. It is for the House to say whether it will proceed to consider it or not. The question is, will the Convention agree to proceed to the consideration of the resolution?

The motion was not agreed to.

INVITATION TO ALTOONA.

Mr. CURRY. I have received a communication which I desire to have read.

The PRESIDENT *pro tem.* The communication will be received and read.

The CLERK read as follows:

CITY OF ALTOONA,
Office of President City Council. }
July 11, 1873. }

Hon. J. W. CURRY, *Member of the Constitutional Convention, Philadelphia:*

DEAR SIR:—At a regular meeting of the common council of this city, held July seventh, the following resolution, offered by Mr. Samuel Lloyd, was unanimously adopted, viz:

Resolved, That the Hon. J. W. Curry, our member of the Constitutional Convention, be instructed to request the members of that Convention to visit our mountain city previous to their final adjournment.

Certified to be a correct copy of the resolution.

Attest:

T. B. PATTON,
Secretary.

Mr. CURRY. I ask that the communication be laid on the table.

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

Mr. CURRY. Let it lie on the table.

Mr. BRODHEAD. I would like to ask the delegate from Blair what they wish us to come for, whether to hold our sessions there or only on a friendly visit?

Mr. BOYD. If it is on a visit, I should like to go.

Mr. CURRY. The city council of Altoona extend an invitation to this body to meet and hold its sessions there. They do this in good faith. I am sure I can say that they will be willing to do anything in their power for the comfort and convenience of the members of the Conven-

tion, in case they accept the invitation contained in the communication which has been read. So far as room is concerned, I think we could furnish a very comfortable hall there, and, so far as a place of boarding is concerned, I presume a majority of the Convention could make it convenient to board at the Cresson house, at Cresson Springs, which is only about fourteen miles away.

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

Mr. CURRY. Yes, sir.

Mr. BOYD. Do you mean that this is an invitation to go there and spend a day, or to go there and deliberate and finish our work? Which is it?

Mr. CURRY. I will answer the gentleman. It will be for the Convention to decide whether they shall remain one day, or stay and complete their work at the city of Altoona.

The PRESIDENT *pro tem*. It is moved that the communication be laid on the table, and that the thanks of the Convention be returned to the city council of Altoona for their invitation.

The motion was agreed to.

PRINTING ACCOUNTS.

Mr. HAY. I desire to present a report from the Committee on Accounts.

The PRESIDENT *pro tem*. The report will be read.

The CLERK proceeded to read the report.

Mr. HAY. I did not propose to press the present consideration of the report, but to ask that it be laid on the table and printed, and if that meets the approbation of the Convention, I will move to dispense with the further reading of the report and that the Committee on Accounts be authorized to have two hundred and fifty copies printed for the use of the Convention.

Mr. BUCKALEW. I object. I want to hear it read first.

Mr. D. N. WHITE. I should like to hear the report read also.

The CLERK resumed and concluded the reading of the report, which is as follows:

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

That the Convention, in pursuance of an opinion that further warrants for payments for its printing should, under the provisions of the general appropriation act of 1873, be drawn by the Auditor Gen-

eral, on the fifteenth day of May, 1873, adopted the following resolution, viz.: *Resolved*, That no warrants be drawn for payments to the Printer of the Convention, but that 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." Whereupon the committee addressed a communication to the Printer, directing his attention to the resolution, and requested him to "present to the committee a complete statement, in detail, of all the printing and binding done by him under his contract with the Convention, and of books furnished, and of all other claims of any kind which he might have against the Convention up to the fifteenth day of May (then) instant, and to state in the account not only the total sum claimed by him up to that date, but also the particular prices charged in every case." An account up to the fifteenth day of May was furnished soon after a repetition of this request had been made. This account when first presented was not accompanied by any vouchers of any kind, and some have not yet been supplied. These facts serve to explain the delay in first reporting upon this subject.

In the examination of this account, the committee has been governed by the same rules and principles which control the settlement of private accounts; and while endeavoring to be accurate and careful, has also endeavored to be strictly just to the accountant. Wherever the Convention has made any order in the matter it has been rigidly observed; and the contract with the Printer, found on page 228 of the Journal, has been kept constantly in view, and its terms undeviatingly followed.

That contract provided, *inter alia*, as follows: "Now I, Benjamin Singlerly, the State Printer aforesaid, do by these presents covenant and agree to * * do all the printing and binding of the said Convention, and * * that I will execute the said printing for the Debates and Journal, and such other printing as may be ordered, in such form and in such type, and to furnish and bind such number of copies as may be ordered, and that I will execute such orders in the premises as may be given me by the Convention, or the Committee on Printing and Binding thereof; and that all the said printing

and binding shall be done and executed on the same terms and in the same manner as now provided by my existing contract with the State of Pennsylvania."

This contract with the State is to "do all the State printing and binding in the manner and in all respects subject to the provisions of the act of 9th April, A. D. 1856, and the supplements thereto, approved February 25, A. D. 1862, and March 27, 1871, for the period of three years from the first day of July, (1871,) at the rate of forty-one and one-fourth ($41\frac{1}{4}$) per centum below the rates specified in said acts."

The act of March 27, 1871, entitled "A further supplement to the act of 9th of April, A. D., 1856, regulating the public printing and binding," provides that "the standard rates of compensation or price for the public printing and binding, and for all objects of charge against the Commonwealth by the public Printer shall be according to the schedule appended to this act."

The rates mentioned in this schedule, so far as applicable to the account before the committee, are as follows:

"*Printing*.—For all composition, in whatever type, except on legislative bills, per thousand ems, as follows:

"Plain composition, sixty cents.

"Rule and figure work composition, one dollar.

"For press-work, for each token of two-hundred and fifty impressions, or less, fifty cents.

"For each page of legislative bills in pica type, including composition, press-work, folding and delivery, one dollar.

"Tabular work shall be executed in brier or smaller type, without additional charge.

"No composition, except of bills, shall be leaded or scabbarded, without the direction of the superintendent, nor shall any composition, upon any pretence whatever, be fixed at other rates than those herein prescribed.

"*Folding, et cetera*.—For folding, gathering, stitching and collating, and delivering, per one hundred sheets of any size, twenty cents.

"*Binding*.—For half-binding, leather back, corner tips, paper sides and labels, per volume, fifty cents. For binding all books or documents in muslin covers, whether plain, gilded or embossed, with lettering on side or back, or both, per volume, twenty cents.

"*Miscellaneous*.—Per hundred sheets, for cutting "and dry pressing, two cents."

The Committee has adopted, in making this settlement, the invariable rule that, wherever applicable, the prices to be paid the Printer, were those mentioned in the said schedule, less the discount of forty-one and one-fourth per centum from those prices, at which the public printing and binding was allotted to Benjamin Singlerly; and has therefore refused to allow any charge made for work coming within the enumeration of said schedule which was in excess of the prices therein prescribed, less the discount. The Committee understands its functions in this matter to be simply to audit according to law, and not to decide as to the sufficiency of the prices fixed. Wherever the prices for work done were not fixed by law, the Committee has allowed what, in its opinion, was a fair price therefor. There being very little of what may be fairly called *extra work*, not provided for in the schedule, done for the Convention, it may be that the Printer, under his contract with the Convention and the State, has a hard bargain, and that he would not be fully and fairly remunerated by strict adherence to the terms of his contract; but the Committee, while expressing no opinion upon this subject, has had in the audit of this account to look only to the law existing for its guidance, and to report accordingly, leaving it to the Convention itself to take such other or further action in the matter as may be deemed necessary and proper.

For purposes of convenience and to show in the clearest and readiest manner the differences between the claims of the Printer and the allowances of the committee, there has been prepared, (and is hereby submitted, marked "A,") a statement, on the one side of which is a substantial transcript of the Printer's account, and on the other side, in corresponding columns, the same items as allowed, disallowed or suspended, by the committee.

The Printer's account to May 15th, as rendered, is for a total sum of \$24,970 36, of which he claims that only \$7,599 43 is subject to a discount of $41\frac{1}{4}$ per cent., and that \$17,371 23 is not subject to any deduction; leaving the bill \$21,835 90.

The committee in the appended statement have restated this account.

1. Allowing, as charged, the sum of..... \$3,179 75

2. Disallowing entirely, for reasons given in the statement, items amounting to the sum of.....	1,668 08
3. Omitting from present settlement for reasons given in the statement.....	2,060 45
4. Reducing, in different proportions, sundry charges which amount, in the account as rendered, to	18,062 08
	<hr/> 24,970 36

The items omitted from the present settlement will be further examined, and included in a subsequent report.

One of the chief results of the examination of this account has been to place the bulk of the items, the charges for which are claimed as not subject to any discount under the law, in the column of items which in the opinion of the committee are legally subject to the discount of forty-one and a quarter per centum from the rates fixed in the Act of March 27, 1871. The greatest differences made have been caused by this change, by the reduction of charges made for work included in the schedule in excess of the prices therein mentioned, by the variations in the calculation of the quantity of matter printed between the Printer and the committee, and by the reduction of sundry charges for extra work not included in the schedule.

For printing wrappers for newspapers, members of the Legislature and heads of departments, the sum of \$974 26 is charged as for regular composition and press work. The charge should have been made as for job work, and it is believed that the sum allowed by the committee, \$200 00, is amply sufficient to compensate the Printer, and that the same work could be done in the most responsible printing offices for that sum. For folding and mailing the Debates sent in these wrappers, the sum of \$591 00 is charged. This is nearly six dollars per day for work which would be fully paid for by one-third of that sum, and \$200 00 has accordingly been allowed. For one thousand one hundred files for Debates, Journal, suggestions and reports on desks of members there is charged \$275 00, or \$25 00 per hundred. These articles, it is believed, could be supplied at \$15 00 per hundred, and the charge has been

accordingly reduced to \$165 00. For marbling the edges and lettering the backs of the volumes of the Debates, the additional charge of ten cents per volume is made. The committee has allowed five cents per volume, which is a very full price for marbling edges, but has refused to allow any additional sum for the label on the back, for the reason that the cost of the label is included in the price for binding—fifty cents per volume—as will appear by reference to the schedule. The Printer claims that the label mentioned in the description of the style of binding for which fifty cents per volume is allowed is not a gilt but a printed paper label. The committee do not concur in his opinion, but believes that the label contemplated is such a label as would suitably and properly be placed on a volume bound in the manner described in said schedule. Supposing that there would be seven volumes of Debates, of four thousand five hundred copies to each volume, there would be altogether thirty-one thousand five hundred volumes of Debates, and one thousand five hundred volumes of the Journal, the difference upon which, on account of this charge, at five cents per volume, would be \$1,650.

Exclusive of the items omitted from the present settlement, together amounting to the sum of \$2,060 45, there is due to the printer, up to the fifteenth day of May, 1873, the following amount not subject to any deduction.....\$1,196 18
And the sum of.....\$13,858 87
Subject to a discount

of 41¼ per cent..... 5,716 78 8,142 09

Total sum due.....\$9,338 27

The sum of five thousand dollars has already been paid the Printer on account.

The following resolution is reported for the action of the Convention :

Resolved, That there is due to Benjamin Singerly, Printer for the Convention, in full of all claims to the fifteenth day of May, 1873, (excepting items in the account above mentioned yet to be fully audited, together amounting to the sum of \$2,060 45,) the sum of \$9,338 27, on account of which has been heretofore paid the sum of \$5,000 00; and that a copy of this report and the action of the Convention thereon, be forthwith transmitted by the Chief Clerk to the Auditor General of the Commonwealth.

DEBATES OF THE

[A.] STATEMENT showing the differences between the claims of Benjamin
and the allowances of the Committee on

CLAIMS OF BENJAMIN SINGERLY.

	Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/2 per ct.	No. 4. No discount
Debates, Vol. 1,	250	Standing committees.....		\$3 64	
		Paper for same.....			\$3 85
	250	Resolutions, offered by Harry White.....		4 06	
		Paper for same.....			
	500	Yeas and nays.....		3 00	
		Paper for same.....			5 88
	200	Yeas and nays.....		2 50	
		Paper for same.....			2 52
	5,266	Copies.			
	57	Forms, four having been cancelled by order of committee on printing			
	3,129,984	Ems, minion, at seventy-five cents per 1,000 ems.....			2,347 48
	219,648	Ems, cancelled forms, at seventy-five cents per 1,000 ems.....			164 73
	1,342	Tokens, at forty cents per token.....			533 80
		Folding at twenty cts. per 100 sheets.....		645 60	
Debates, Vol. 2,		Dry pressing, at two cents per 100 sheets.....		64 65	
	4,500	Copies, binding, at fifty cents per volume.....		2,250 00	
	450	Copies, marbling edges and extra lettering, at ten cents per volume.....			45 00
		Indexing Vol. 1.....			200 00
	5,266	Copies.			
	53	Forms.			
	2,910,336	Ems, Minion, at seventy-five cents per 1,000 ems.....			2,182 75
	54,912	Ems, cancelled form, at.....	\$0 75		41 18
	1,188	Tokens, at.....	40		475 20
		Folding, at.....	20	572 40	
Debates, Vol. 3,		Dry pressing, at.....	2	57 24	
		Indexing, Vol. 2.....			200 00
	5,266	Copies.			
	58	Forms.			
	3,184,896	Ems, Minion, at.....	75		2,388 67
	1,276	Tokens, at.....	40		510 40
*Debates, Vol. 4,		Folding.....	20	614 80	
		Dry pressing.....	2	61 48	
	5,266	Copies.			
	22	Forms.			
May 15, 1873.....	1,208,064	Ems, minion, at.....	75		906 04
	484	Tokens, at.....	40		193 60
		Folding, at.....		233 20	
		Dry pressing.....		23 32	

* These items in Vol. 4 are allowed on account of the

Singerly, printer for the Convention, in his first account, (May 15, 1873,) Accounts and Expenditures of the Convention.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/2 per ct.....	No. 4. No discount of.....
.....	.....	.....	\$3 64	
.....	.....	.....	4 06	\$3 85
.....	.....	.....	3 00	1 21
.....	.....	.....	2 50	5 88
.....	.....	.....		2 52
5,254	Copies.			
57	Forms.			
2,862,860	Ems, minion, at sixty cents per 1,000 ems.....		1,717 71	
216,832	Ems, minion, at sixty cents per 1,000 ems.		130 10	
1,254	Tokens, at fifty cents per token.....		627 00	
.....	Folding at twenty cents per 100 sheets.....		604 20	
.....	Dry pressing, at two cents per 100 sheets.....		60 42	
4,500	Copies, binding, at fifty cents per volume.....		2,250 00	
450	Copies, marbling, (no extra lettering,) at five cts. per volume.....			22 50
.....	Indexing Vol. 1, price fixed by committee on printing and binding.....			200 00
5,254	Copies.			
52	Forms.			
2,815,428	Ems, at sixty cents per 1,000 ems.....		1,689 25	
1,144	Tokens, at fifty cents.....		572 00	
.....	Folding, at twenty cents.....		551 20	
.....	Dry pressing, at two cents.....		55 12	
.....	Indexing Vol. 2.....			200 00
5,254	Copies.			
52	Forms.			
2,757,832	Ems, at sixty cents.....		1,654 70	
1,144	Tokens, at fifty cents.....		572 00	
.....	Folding, at twenty cents.....		551 20	
.....	Dry pressing, at two cents.....		55 12	
5,254	Copies.			
1,208,064	Ems, at sixty cents.....		724 84	
484	Tokens, at fifty cents.....		242 00	
.....	Folding.....		233 20	
.....	Dry pressing.....		23 32	

volume, and not particularly to the 15th day of May.

DEBATES OF THE

STATEMENT—Continued.

CLAIMS OF BENJAMIN SINGERLY.

	Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/4 per ct.....	No. 4. No discount off.....
Journal.....	1,500	Copies.			
	92	Forms.			
	4,121,600	Emss, brevier, at.....	\$0 75		\$3,091 20
	552	Tokens, at.....	40		220 80
		Folding.....		\$276 00	
		Dry pressing.....		27 60	
Suggest'ns and Amendments...	200	Copies.			
	35	Forms.			
	1,050,786	Emss, long primer, at.....	60	630 47	
	21,054	Emss, long primer figurework.....	1 00	21 05	
	35	Tokens, at.....	50	17 50	
		Folding.....		14 00	
		Dry pressing.....		1 40	
Wrappers for newspapers.	436				
	834,604	Emss, long primer, plain, at.....	60	500 76	
	436	Tokens, at.....	50	218 00	
Wrappers for Legislature & Heads of Departments.	155				
	296,670	Emss, long primer, plain, at.....	60	178 00	
	155	Tokens, at.....	50	77 50	
		Folding, packing and mailing 591 copies Debates for 100 days.....			591 00
Populat'n maps	500	Copies.....	12 1/2		62 50
Small's Hd Bk,	140	Copies, at.....	1 25		175 00
	500	Yeas and nays.....		3 00	
		Paper for same.....			1 68
	1,000	Yeas and nays.....		3 98	
		Paper for same.....			3 36
Man'l of rules...	500	Copies.			
	3	Sheets.			
	67,200	Emss, minion, plain, at.....	60	40 32	
	6	Tokens, at.....	50	3 00	
		Folding.....		3 00	
		Dry pressing.....		30	
	500	Copies binding, at.....	20	100 00	
	500	Yeas and nays.....		3 00	
		Paper for same.....			1 68
	3	Forms delayed three days, sixty hours, on account of delay in returning proof.....			417 00
	1	Form delayed three hours.....			6 96
	3	Forms debates cancelled, signatures 41, 42, 43.....			
	176,640	Emss.....			162 48
	66	Tokens.....			33 00
	3	Forms, forty-eight hours waiting for proof.....			334 08
		Correcting members' first proof, 20 hours.....			46 40
		Correcting members' second proof, 15 hours.....			34 80
		Correcting members' first proof, 5 hours.....			11 60

CONSTITUTIONAL CONVENTION.

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STATEMENT—Continued.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/2 per ct....	No. 4. No discount of.....
1,500 Copies.				
1,435,200 Ems, brevier, at.....		\$0 60	861 12	
260 Tokens, at.....		50	180 00	
Folding.....			117 20	
Dry pressing.....			11 72	
200 Copies.				
26 Forms.				
350,262 Ems, long primer, at.....		60	210 16	
21,054 Ems, long primer, at.....		1 00	21 05	
26 Tokens, at.....		50	13 00	
Folding.....			10 40	
Dry pressing.....			1 04	
436 Wrappers.....				\$200 00
145 Wrappers.....				
500 Copies.....				200 00
140 Copies, at.....		90		62 50
			3 00	126 00
				1 68
			3 98	3 36
500 Copies.				
3 Sheets.				
67,300 Ems, at.....		60	40 32	
6 Tokens, at.....		50	3 00	
Folding.....			3 00	
Dry pressing.....			30	
500 Copies binding, at.....		20	100 00	.
500 Yeas and nays.....			3 00	
Paper for same.....				1 68
	[This delay in waiting for proof, so far as made known to your committee, was not by authority of the Convention, or any of its committees, and was in direct contravention of the positive resolution of the Convention, that its Debates should be furnished the day after their delivery.]			
	[There was nothing before the committee to show that these forms were cancelled for the fault, or by the order, of any other person than the printer himself.]			
	[This is an expense for which the Convention cannot be justly held responsible; and can only be regarded as a matter of private arrangement and agreement between the printer and such delegates as he may have accommodated by this extra care.]			

DEBATES OF THE

STATEMENT—Continued.

CLAIMS OF BENJAMIN SINGERLY.

	Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/2 per cent.....	No. 4. No discount of.....
		Correcting members' second proof, 5 hours.....			\$11 60
		Correcting members' second proof, 5 hours.....			11 60
		Correcting members' second proof, 5 hours.....			11 60
		Correcting members' third proof, 10 hours.....			23 20
		Correcting members' third proof, 2 hours.....			4 64
		Correcting members' fourth proof, 2 hours.....			4 64
		Cover paper for Hopkins Memorial purchased prior to the order for print'g, it being countermanded(?)			13 75
		Services of an employee at Convention, preparing and laying printed matter upon members desks.....			216 00
	1, 100	Files for Debates, Journal and articles and suggestions.....	\$0 25		275 00
	100 qrs...	Lithographed letter heads.....		\$10 00	
	80 qrs.....	do..... note heads.....		20 00	
	60 qrs.....	do..... letter heads.....		24 00	
	200 qrs.....	do..... note heads.....		50 00	
	80 qrs.....	do..... letter heads.....		32 00	
	60 qrs.....	do..... note heads.....		15 00	
	80 qrs.....	do..... letter heads.....		32 00	
	660 qrs...				
	2, 000	Envelopes, No. 6.....			9 30
		Lithographing same.....		5 00	
	1, 000	Official envelopes, No. 10.....			10 25
		Lithographing same.....		2 50	
	3, 000	Official envelopes, No. 6.....			13 95
		Lithographing same.....		7 50	
	3, 000	Envelopes.....			13 95
		Lithographing same.....		7 50	
	9, 000				
Majority and minority reports of committees.	200 qrs...	Bill paper.....			70 00
	200 qrs...	Journal paper.....			70 00
	1, 000	Copies.			
	5	Forms.			
	241, 920	Ems, brevier, at.....	60	145 15	
	20	Tokens, at.....	50	10 00	
		Folding.....		10 00	
		Dry-pressing.....		1 00	
Reports of committees in bill form.	300	Copies on each bill, 450 pages.....		450 00	
	1, 000	do..... do..... 16...do.....		16 00	
	12	Tokens.....		6 00	
	433	Copies on each bill, 62 pages.....		62 00	
	16	Tokens.....		8 00	
	81	Reams double cap paper for same.			
	28 lbs.				680 40

CONSTITUTIONAL CONVENTION.

681

STATEMENT—Continued.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 41 per cent....	No. 4. No discount of.....
.....	[So far as appears, there is no justification for this charge, and the printing and binding of the Memorial was done by other persons.]			
.....	[There does not appear to be any ground for this charge, and the Convention has its own employees and officers to perform such duties.]			
1, 100	Files, at.....	\$0 15		\$165 00
.....	[These letter and note heads and envelopes, it appears from the statement of the Chief Clerk and the printer, were not ordered by any officer of the Convention, but were voluntarily supplied, in the hope that they would be eventually paid for. In the opinion of the committee, this is not a "proper expense" of the Convention, so far as the supply to the members is concerned, the State having previously paid to each member the sum of fifty dollars as an allowance for stationery. The fact that this claim would not be reported upon favorably by this committee was made known to the printer, upon his inquiry, at the time they were first seen here, and the reasons therefor fully explained to him.]			
.....	[Passed over for want of sufficient vouchers or evidence that the quantity charged for was actually furnished.]			
.....	[Passed over for want of sufficient vouchers, information and means for making estimates of correctness of charge.]			
.....	[Passed over for same reasons as last above mentioned.]			
.....	[Passed over for same reasons as last above mentioned.]			

DEBATES OF THE
STATEMENT—*Continued.*

CLAIMS OF BENJAMIN SINGERLY.

Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 41½ per cent.....	No. 4. No discount off.....
	Postage on Debates to 591 newspapers and heads of departments, three quarters Discount of 41½ per cent. off..... Claim'd to be not subject to deduction \$7,599 43 3,134 76 4,464 67 17,371 23 21,835 90	\$531 90 17,371 23

CONSTITUTIONAL CONVENTION.

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STATEMENT—Continued.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 4½ per ct....	No. 4. No discount off.....
	[Passed over for same reasons as last above mentioned.]			
	Discount of 4½ per cent. off.....		\$13,858 87 5,716 78	\$1,196 18
	Not subject to deduction.....		8,142 09 1,196 18	
			9,338 27	
	Not yet finally audited of this account, marked above as "passed over" for the present.....		\$2,060 45	

Mr. HAY. I move that the report be laid on the table, and that the Committee on Accounts and Expenditures be authorized to have two hundred and fifty copies of the report printed for the use of the Convention, that members may examine it.

The motion was agreed to.

RAILROADS AND CANALS.

Mr. D. W. PATTERSON. I move that we proceed to the consideration of the article on railroads and canals.

The motion was agreed to, and the Convention resumed the consideration on second reading of the article on railroads and canals.

The PRESIDENT *pro tem.* When the Convention adjourned on Saturday, the seventh section of the article as printed was before the Convention.

Mr. COCHRAN. According to my recollection, when the Convention adjourned on Saturday, the motion pending was a motion to reconsider the vote by which the amendment of the gentleman from Lycoming (Mr. Armstrong) had been rejected.

The PRESIDENT *pro tem.* It was. The pending question is on the motion of the gentleman from Philadelphia (Mr. Cuyler) to reconsider the vote by which the amendment offered by the gentleman from Lycoming (Mr. Armstrong) to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson) was rejected.

The reconsideration was agreed to, there being, on a division, ayes, thirty-seven; noes, thirty-one.

The PRESIDENT *pro tem.* The amendment of the gentleman from Lycoming to the amendment is before the Convention.

Mr. KNIGHT. Be kind enough to have it read.

The PRESIDENT *pro tem.* The Clerk will read the amendment to the amendment.

The CLERK. The amendment to the amendment was to insert, after the word "thereof," in the amendment, these words:

"Persons and property transported by any such company shall be delivered at any station within the State, at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station; but commutation tickets to passengers may be issued as heretofore,

and reasonable extra rates, within the limits of the charter, may be made in charges for any distance not exceeding fifty miles."

Mr. WHERRY. I ask that the section, as it will be amended if this amendment shall be adopted, be read.

The PRESIDENT *pro tem.* The amendment as it would read if amended as proposed by the gentleman from Lycoming (Mr. Armstrong) will be read.

The CLERK read as follows:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof. Persons and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. ARMSTRONG. I do not desire to reopen the debate upon the question, but there are some members who were not here when this question was taken before, and I merely call their attention to the fact that the effort has been in this proposed amendment to totally prohibit that which has been the great standing abuse against which the people of the Commonwealth have complained, namely, that freights are carried past stations on the line of a railroad and delivered at more distant points for less money than the company are willing to deliver them at points past which they must necessarily carry them. At the same time it is so guarded so as not to interfere with that sound discretion of the companies which is necessary to the safe transaction of business to enable them to compete successfully with other railroad lines. I believe that with this amendment everything is guarded sufficiently to leave a sound discretion in the company and yet to protect the people against the evils which I have indicated.

Mr. COCHRAN. I wish to call the attention of the Convention simply—I do not propose to go into a discussion of this question—to the fact there is nothing in this amendment which refers to special rates

or drawbacks, and also that it will not meet, to a very great extent, the object which the gentleman from Lycoming, its author, proposes, as was stated here in the discussion on Saturday. I hope therefore that the amendment to the amendment will not be adopted, and on its adoption I call for the yeas and nays.

Mr. CAMPBELL. I second the call.

Mr. ARMSTRONG. One word of explanation, as I do not propose to re-open the discussion upon this point—

Mr. D. N. WHITE. I rise to a point of order. The gentleman has already spoken upon this subject.

Mr. ARMSTRONG. I do not intend to to speak upon the question; I merely rise to an explanation.

Mr. D. N. WHITE. I insist upon my point of order.

The PRESIDENT *pro tem.* The Chair must decide the point of order well taken.

Mr. BUCKALEW. A single word, Mr. President.

The PRESIDENT *pro tem.* The gentleman from Columbia will give way for a moment. The yeas and nays have been demanded. Do ten gentlemen rise to second the call?

More than ten gentlemen rose.

The PRESIDENT *pro tem.* The call for the yeas and nays is sustained. The gentleman from Columbia will proceed.

Mr. BUCKALEW. But a single word. I shall support this amendment because it contains some matters of which I approve and which are not in the section. I desire to call the attention of the Convention to the fact that after this amendment is agreed to, if the Convention sees fit to adopt it, it will be possible to amend it further by adding anything else; so that the clause which the gentleman from York refers to, and which he desires to have placed in the section, he can still move after this amendment is acted upon. I mention this in order that his objection may not militate against the adoption of the amendment on the present vote.

Mr. CAMPBELL. Was there not an amendment previously offered, and is not this an amendment to the amendment?

The PRESIDENT *pro tem.* The gentleman from the city is correct. There was an amendment offered by the gentleman from Allegheny (Mr. T. H. B. Patterson) pending, and this amendment is an amendment to that amendment.

Mr. CAMPBELL. Then I ask that that amendment be stated.

The CLERK. The original amendment was to strike out all after the word "section" and insert:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof, nor make a higher charge for a shorter distance than for a longer distance; and no special rates or drawbacks shall, either directly or indirectly, be allowed excepting excursion and commutation tickets."

Mr. T. H. B. PATTERSON. I desire to call the attention of the delegates to the fact that the only difference between my amendment and the amendment of the gentleman from Lycoming is—

Mr. BRODHEAD. I protest against discussion at this point. The gentleman from Allegheny has on several occasions, just after the yeas and nays have been ordered, taken the floor in this manner in order to have the last word. I protest against it. The yeas and nays have been ordered. Let them be called.

The PRESIDENT *pro tem.* The Chair will follow the rules of the House. The yeas and nays have been ordered and the Clerk will proceed with the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Addicks, Armstrong, Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Brown, Buckalew, Carter, Clark, Corbett, Cronmiller, Dallas, Edwards, Elliott, Fell, Fulton, Hall, Harvey, Hunsicker, Knight, Lamberton, Lilly, Littleton, MacConnell, Mann, Niles, Patton, Purman, Reed, Andrew, Simpson, Struthers, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry and White, J. W. F.—39.

NAYS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Calvin, Campbell, Cochran, Curry, De France, Ewing, Funck, Gilpin, Guthrie, Hemphill, Horton, Howard, Kaine, Landis, Lawrence, Lear, McCulloch, M'Murray, Mantor, Newlin, Patterson, D. W., Patterson, T. H. B., Purviance, Sam'l A., Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Temple, Van Reed, White, David N., White, Harry and Worrell—41.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Collins, Corson, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Green, Hanna, Hay, Hazzard, Heverin, Long, MacVeagh, McCannant, McClean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Woodward, Wright and Meredith, *President*—53.

The *PRESIDENT pro tem.* The question recurs on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was agreed to.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. LILLY. I offer the following amendment, to come in at the end of the section:

"That no discrimination shall be made in favor of any party in carrying freight of the same class the same distance and same direction, by drawback or otherwise."

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Carbon (Mr. Lilly.)

Mr. COCHRAN. I merely wish to call attention to what I believe to be correct, that while I entirely agree with the object sought to be attained by the gentleman from Carbon in this amendment, I think it has already been attained in the amendment offered by the gentleman from Allegheny, (Mr. T. H. B. Patterson,) which prohibits the granting of drawbacks or special rates. I ask for the reading of the amendment of the gentleman from Allegheny as it has been adopted, as a substitute for the section.

The CLERK. The section as amended reads as follows:

SECTION —. "No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof, nor make a higher charge for a shorter distance than for a longer distance including such shorter distance; and no special rates or drawbacks shall either directly or indirectly be allowed, excepting excursion and commutation tickets."

Mr. HARRY WHITE. Mr. President: I suppose we all sympathize, at least I do, with the purpose of the amendment of the delegate from Carbon, but I call his attention to the fact that the matter is provided for. I apprehend the object of his amendment is to meet this objection, that some citizens of Pennsylvania go outside of the State and purchase merchandise to bring into the State, and the companies may now discriminate in their favor. I am satisfied that the wording of the amendment offered by the delegate from Allegheny (Mr. T. H. B. Patterson) which has just been adopted meets that question exactly. It provides that no discrimination shall be made against or between the citizens of the State. As to the drawback matter, we have that provided for.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Carbon (Mr. Lilly.)

The amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. BUCKALEW. Mr. President: I understand that this is a substitute for the entire section.

The *PRESIDENT pro tem.* It is.

Mr. BUCKALEW. This amendment, if I remember correctly, has dropped the provision that extra charges may be made by railroads for distances under fifty miles. That is a very material and a very necessary provision, and without it we will find that the section will become extremely odious. It is impossible for large service to be done by a railroad company for short distance for the public generally or for other corporations under general rates of uniform charge. As for instance, in the county of Luzerne, I remember a case. There a railroad company erected a bridge across the Susquehanna river, and it is obliged under the general law to carry enormous masses of coal for other corporations, a distance of one, two or three miles only. The charge which this company makes under general and uniform provisions of law for that distance will not compensate them for one-fifth the actual cost, and the result is that they are obliged to charge beyond any general rule or rate, of course within the limits of their original character. It will be an absolute stop upon the transaction of all such local business, of all such business over short lines, because it will be extremely oppressive upon the company and they must resort

to some device to get rid of performing that service. Besides, it is grossly unjust.

There is another point to which I desire to call attention in this amendment. The gentleman from Allegheny says you shall not charge more for a shorter than a longer distance—the longer distance to include the shorter. Now, I want to know about the practical operation of that provision. You cannot charge more for transportation from Harrisburg to Lancaster than you charge from Harrisburg to Philadelphia; that is, the longer distance from Harrisburg to Philadelphia would include the shorter distance from Harrisburg to Lancaster, and therefore it is forbidden; but it does not follow that the limitation would apply to service running west from Harrisburg, between Harrisburg and Pittsburg. Your limitation would be confined to a case where the longer distance included the shorter one.

As to the first objection which I have mentioned—the omission of the provision that extra charges may be made under fifty miles—that could be corrected by amending the section, and I therefore move to amend by adding at the end of the section as it now stands the words to be found in the twelfth and thirteenth lines of the printed section: "And reasonable extra rates within the limits of the charter of a company may be made in charges for any distance not exceeding fifty miles."

The PRESIDENT *pro tem.* That amendment is before the Convention.

Mr. T. H. B. PATTERSON. The gentleman from Columbia objects to that exception being left out. I will merely state that the reason why it was left out in the substitute was because the substitute already provides for that emergency, in this: The substitute does not attempt to fix any *pro rata* rate whatever. It permits the company to fix their rate for fifty or sixty or seventy miles, as they choose, and the only limitation it imposes is that they shall not charge more for a shorter than a longer distance. So they may fix a rate for fifty miles, and then the shorter distances all get the benefit of that fixing. There could be no discrimination against shorter distances. Delegates will readily see how it provides for it fully.

Then the other objection raised by the gentleman from Columbia is that, for instance, the rate between two long points in the same direction would necessarily

include the distance to a shorter point, and he objects that that would not necessarily provide that they should charge less for one of those shorter points than they would for a longer distance in another direction. The object of the substitute was to leave that question open, because the great objection made to the section was that, for instance, there might be from Harrisburg to Philadelphia a rate of charge less than a railroad could afford to charge from Altoona to some point along the road, a shorter distance, where they had a precipitous route. Therefore the very object of inserting "including such shorter distance" was that the only effect of it should be over the same ground, in order to leave the questions of inequality for the road to adjust themselves. In other words, this section does not interfere with their *pro rata* rates over any portion of the road at all, but allows them to impose those fair rates according to the road, but at the same time it provides that when they fix a rate they shall not charge higher for a shorter than a longer distance. Therefore it is an adjustable arrangement in a very few words that will apply to all cases. Neither of the objections of the gentleman from Columbia applies to it, and therefore I think the delegates would do well to vote down the proposed amendment, because it is already included in the substitute.

Mr. PURMAN. It is the interest of the people that the amendment of the gentleman from Columbia (Mr. Buckalew) should prevail. The railroads might, without that amendment, get their full compensation for carrying over a very short distance, as for instance over the bridge referred to by the gentleman from Columbia, by making their charges so high for a long distance that the same rate for a short distance over the bridge would compensate them; but that would be imposing a burden upon the people. We should allow the railroads to carry for the longer distances at the lowest possible rate to accommodate the people. Then that which goes over a greater distance than fifty miles can be carried at the same proportion, and that within the fifty miles would be regulated according to the condition of the road. It is in the interest of the people that the amendment of the gentleman from Columbia should prevail.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Columbia.

The amendment was agreed to.

The PRESIDENT *pro tem.* The question now recurs on the section as amended.

The yeas and nays were required by Mr. Cochran and Mr. Campbell, and were as follow, viz :

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Bigler, Black, Charles A., Brown, Buckalew, Calvin, Campbell, Carter, Cochran, Corson, Dallas, De France, Edwards, Elliott, Ewing, Fell, Fulton, Funck, Gilpin, Guthrie, Harvey, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Lamberton, Landis, Lawrence, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Newlin, Niles, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Ross, Russell, Smith, H. G., Smith, Wm. H., Struthers, Temple, Turrell, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—62.

NAYS.

Messrs. Addicks, Barclay, Brodhead, Broomall, Corbett, Cronmiller, Curry, Knight, Lear, Lilly, Littleton, Patton, Rooke, Simpson, Smith, Henry W., Van Reed Walker and Wetherill, Jno. Price—18.

So the section was agreed to.

ABSENT.—Messrs. Ainey, Andrews, Baer, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Boyd, Bullitt, Carey, Cassidy, Church, Clark, Collins, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Green, Hall, Hanna, Hazzard, Heverin, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Woodward, Wright and Meredith, *President*—53.

The next section of the article was read as follows:

SECTION 8. All railroads and canals are declared public highways, and all individuals, partnerships, and corporations shall have equal right to have persons and property transported thereon, except officers and partnerships or corporations composed in whole or in part of officers of each respective railroad or canal, who are hereby prohibited from engaging in the business of forwarding or transport-

ing on the lines thereof; and all regulations adopted by the companies owning, controlling or managing such railroads or canals, having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted, in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships, and companies shipping and transporting thereon, in furnishing cars or motive power.

Mr. FULTON. Mr. President: I move to amend the section by striking out all after the word "thereon" in the third line down to and including the word "thereof," in the sixth line, and also by striking out in the ninth line the words "except as above excepted."

This amendment, Mr. President, I propose just to make this section agree with section six as amended the other day. It is the same portion that was stricken out of that section.

Mr. COCHRAN. Mr. President: The Convention on Friday, I think, adopted the section which was presented by the gentleman from Philadelphia, (Mr. Bullitt,) who is not now present, which he contended covered the same ground as the matter which is here proposed to be stricken out. If this proposition to amend, offered by the gentleman from Westmoreland (Mr. Fulton) should succeed, it will have the effect, I apprehend, of making the two sections inconsistent with each other. Now, it will be observed, sir, that this section does not operate as a prohibition upon officers of companies engaged in mining or manufacturing. That was stricken out in the sixth section, I think it was, on the motion of the gentleman from Westmoreland, and, therefore, that being stricken out, this section refers simply to the matter of transportation. The object is to prevent inside companies who are connected with railroads, inside parties, officers and others, from undertaking to engage in the business of transporting over the lines of those roads. In other words, it is to prevent special freight lines, or fast freight lines, or whatever they are called, which are gotten up under objectionable circumstances.

Now, if you leave these words in the section, it will be in exact accordance and harmony with the section that was adopted on the motion of the gentleman from

Philadelphia (Mr. Bullitt.) If you strike these words out, the probability is you will have two sections conflicting with each other, because Mr. Bullitt's section which precedes this makes a prohibition and this section makes a positive grant to all parties to do a certain thing.

This section thus amended would in point of fact, I apprehend, overrule the section which was adopted on motion of the gentleman from Philadelphia; and that was one reason why we objected, or I did at least, to the introduction of that section at the time. But the Convention having adopted it, I think we ought to retain these words; they have no more scope than the section of the gentleman from Philadelphia, and the two will then be in accord. Otherwise they will be opposed to each other in their operation and effect.

Mr. T. H. B. PATTERSON. I want to call the attention of the Convention to the fact that although this amendment is all right in spirit, and although we ought to strike out these words, yet if we do strike out "except as before excepted," the courts might construe this to overrule the section offered by the gentleman from Philadelphia (Mr. Bullitt.) Perhaps these words ought to be stricken out here, but ought to be re-inserted in place of the third line, which it is now proposed to strike out. Otherwise this section may be construed to overrule or conflict with the former section. I suggest to the gentleman from Westmoreland that he so modify his amendment.

Mr. FULTON. I modify my amendment in that particular. I move to strike out the words, "except as above excepted," where they now occur, and to insert them in the place of the third line, proposed to be stricken out.

Mr. J. PRICE WETHERILL. Read the section entire, as it is proposed to amend it.

The CLERK read as follows:

"All railroads and canals are declared public highways, and all individuals, partnerships and corporations shall have equal right to have persons and property transported thereon, except as above excepted; and all regulations adopted by the companies owning, controlling or managing such railroads or canals having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted, and transportation of property on such railroads and canals shall be void; and no

railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships or companies shipping and transporting thereon, in furnishing cars and motive power."

On the question of agreeing to the amendment proposed by Mr. Fulton, a division was called for, which resulted thirty-nine in the affirmative and eleven in the negative. So the amendment was agreed to.

The PRESIDENT *pro tem*. The section as amended is now before the Convention.

Mr. CAMPBELL. On that question I call for the yeas and nays.

Mr. RUSSELL. I second the call.

Mr. LANDIS. Before the vote is taken, I would suggest an alteration in the phraseology of the first portion that I think ought to be made. The section declares "all railroads and canals are declared public highways." I would therefore suggest to the chairman of the committee that some modification be made to meet that difficulty, because it is not contemplated here that private railroads shall be made public highways. "Railroads and canals of incorporated companies," I presume, would meet the difficulty.

The PRESIDENT *pro tem*. Does the gentleman move an amendment?

Mr. LANDIS. I do not move an amendment, but I make the suggestion to the chairman of the Committee on Railroads and Canals.

Mr. COCHRAN. I will make the amendment which the gentleman suggests, and will move to amend the section as amended, so that it shall read, "all railroads and canals owned and operated by incorporated companies."

Mr. CORBETT. That will not cover all cases. There may be private railroads owned by corporations, used for their own corporate purposes. The truth is that while I shall vote for this section, I see no benefit in it. It is simply declaratory of the common law, and I apprehend that there is no danger of the Legislature changing the duties of railroads. I shall vote for the section, but it suggests itself to me that the amendment now moved by the chairman of the Committee on Railroads will not cover every case. Incorporated companies may own railroads, and I presume there are hundreds of them so owned which are used for their own private purposes altogether and not as common carriers at all.

The PRESIDENT *pro tem.* The question is upon the amendment.

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

Mr. LANDIS. The Convention having declared that all railways shall be public highways, which would interfere with private railways, I shall vote against the section, although I am in entire sympathy with all the rest of it.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Bigler, Black, Charles A., Brown, Buckalew, Calvin, Campbell, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Dallas, De France, Edwards, Elliott, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Harvey, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Lamberton, Lawrence, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Newlin, Niles, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Simpson, Smith, H. G., Smith, Wm. H., Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—66.

NAYS.

Messrs. Barclay, Boyd, Brodhead, Broomall, Fell, Green, Knight, Landis, Lilly, Patton, Smith, Henry W., Struthers, Walker and Wetherill, Jno. Price—14.

So the section as amended was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Clark, Collins, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Hanna, Hazzard, Heverin, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Runk, Sharpe, Stanton, Stewart, Woodward, Wright and Meredith, President—53.

Mr. CORBETT. I move to reconsider the vote just taken for the purpose of inserting after the word "canals" the words "doing the business of common carriers."

Mr. HALL. I second the motion.

The motion to reconsider was agreed to, there being on a division ayes forty-eight, none not counted.

Mr. CORBETT. Now I move to amend the section by inserting after the word "canals," in the first line, the words "doing business as common carriers."

Mr. LANDIS. That meets the difficulty suggested, and I hope the amendment will be agreed to.

Mr. BUCKALEW. I am opposed, for one, to this amendment. If we put it in I think we had better omit this first part of the section altogether, for it will amount to nothing. It will amount to about this: All railroads which are common carriers shall be common carriers! That will be exactly what it will mean. I understand that this whole article on railroads is applicable, and applicable only, to companies organized for general carrying purposes, and it does not relate to special or particular privileges which the Legislature have granted under the lateral railroad laws to the owners of private property or private persons. It is confined to those which are of a public nature or *quasi* public nature, in which all the people of the community are interested. In that point of view this section will not be at all useful. It says "all railroads and canals" shall be declared public highways. What railroads and canals? Those with which this article deals, these institutions of a public nature. Well, the Legislature of this State allows railroads for the improvement of private property, simply connected with public highways under special provisions and not at all affected by this article. If an individual wants to make a lateral railroad, he does not incorporate himself into a public company; he would not be subject to any of the regulations found in this article from one end to the other for the reason that he carries on a private enterprise.

The only effect of putting in this amendment would be to make that doubtful which is now perfectly clear. At present all railroads organized under the general laws of the State or under special laws of the State for carrying purposes are public highways, are treated as such by the people, and are treated as such in the courts; and to put into this section the words that railroads that are common carriers are public highways will mean one of two things: Either that the section shall be considered an absurdity and accepted as such, or that doubts shall be thrown upon the present legal principle, well established and unquestioned, that all railroads organized

under our general laws, or for carrying purposes, are public highways.

I think, therefore, we had best not put in this amendment at this point; and if, on revision, there be anything necessary to distinguish public railroads from private ones, let it be done in this article by some special clause or modification of the language of the first section.

Mr. ARMSTRONG. I cannot agree with the learned gentleman from Columbia in his construction of this clause in this article of the Constitution. By the first section we have used language, I think, as general as it is possible to express the power granted to "any individual, company or corporation," that is to say, any one person, any company, any corporation "organized for the purpose shall have the right to construct a railroad or canal between any two points in this State." Then follows a provision by which they may connect with other railroads, which seems to contemplate not only the construction of great through lines, but the right to construct lateral railroads which shall connect with other railroads. I do not know how this power could be made more broad than it is.

Then the section under consideration provides:

"All railroads and canals are declared public highways;" that is, all railroads and canals, as the gentleman from Columbia properly remarks, within the purview of this article, but the first section of it has made it as broad as language can make it, and I apprehend that when you come to construe it literally all railroads and canals are declared public highways.

I did not vote upon this section. There are parts of it I should like to vote for, but I cannot vote for it in the general phrase in which it stands, because if a company builds a lateral railroad through or along its own property and that of the adjoining owner, it might under this section use that road without at all contributing to its construction; and I think in that sense it is dangerous, extremely so. But with the amendment of the gentleman from Clarion as he proposes to insert it, it ceases to be dangerous and becomes in my judgment simply useless; but still I would prefer to vote for the section with that clause in to remove obscurity and doubt and prevent a great abuse of the power which is here conveyed.

Mr. COCHRAN. The general policy of our law is, as expressed in all the acts, I

believe, on the subject, that these railroads and canals, which have taken the place of our ordinary roads in old times, our turnpikes and public highways, should themselves be public highways; and I do not see why the incorporation into this Constitution of a provision which makes them public highways and leaves it out of the power of the Legislature to give them any other character should be objected to.

I concur with the gentleman from Columbia in part in what he has said here, and that is, that this article has no reference or allusion to private railroads whatever or private canals or private companies. It relates to the public institutions created under the laws of our State. But then if there is a doubt about it, if anybody thinks it has a different application, I am willing for one to accede to the proposition of the gentleman from Clarion; at the same time I am not willing to admit that the section is mere *brutum fulmen*, simply because it establishes in the Constitution a principle which has been recognized in our legislation. Let it be understood always and everywhere that in this Commonwealth of Pennsylvania a railroad company or a canal company incorporated for public uses is and shall be, and no Legislature shall make it otherwise than, a public highway.

Mr. BUCKALEW. I should like to ask the gentleman from York a question before he sits down. I am surprised at his willingness to accept this amendment. I want to understand his view of it. Take the case of a coal company that has a road for thirty miles in length, does he want to have it understood that it shall not come under classification as a public highway, because that company is not engaged in the business of common carriers for others? They cannot get the right of way except under the broad power of the Commonwealth under the head of eminent domain. They are enabled to make their road simply because they can seize private property on the ground that the road shall be for public use. They cannot go ten feet perhaps from their mine except on that principle, and yet the gentleman from Lycoming seems to suppose that unless you put in this amendment these companies are to be oppressed. I say under the Constitution now but few of the mining companies possess any road which is not a public highway, and if other corporations under proper laws enacted for the purpose con-

nect their road with such road the owners of such road are obliged to permit them to use it; they cannot get a private grant, except under the lateral railroad law; they cannot get a right to build their railroad except they dedicate it to public use.

Now, I am afraid of this amendment. Every one of these private corporations that are not engaged in the business of common carriers properly, that want to make their road a close monopoly for their own use, will insist that by these very words you are putting in here, they are taken out of the class of public highways, and that they can exclude any individual or any rival company from any possible use of the road upon the ground that as they themselves are not engaged in the business of public carriers, their road is not a public highway. So, sir, I desire to understand distinctly from the gentleman from York—I find I am changing my interrogatory into a speech without having intended it—if he is willing to throw open to doubt and difficulty this whole question of public right in all roads that are established under the power of public domain, whereas by the present Constitution there is no doubt or difficulty upon it.

Mr. ARMSTRONG. I ask the gentleman from Columbia whether or not any other road would have a right to run cars over a lateral railroad under the lateral railroad act? They have not, and yet they take their franchise under the right of eminent domain.

Mr. BAEK. As the section now stands all railroads and canals are declared public highways, and it is good English. If you insert the words proposed to be put in, it will not be English or anything else. It will then read that all railroads and canals may be public highways, but no railroad or canal can be a common carrier. Railroad and canal corporations are common carriers, but railroads and canals are not. Therefore I think we shall murder this section materially by adopting this amendment.

Mr. BIDDLE. I merely wish to say that I concur entirely with the gentleman from Columbia, for the reasons he has given, and I hope this amendment will not pass.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was rejected.

The PRESIDENT *pro tem*. The question is on the section.

The section was agreed to.

Mr. S. A. PURVIANCE. I offer the following amendment as a new section, to be inserted at this point:

"All discriminations made by railroad companies, being common carriers, in their rates of freight or passage over their roads, in favor of transportation companies or others engaged in transportation, by abatement, drawback or otherwise, are hereby prohibited, and the company guilty of such unlawful discrimination shall be liable to forfeiture of charter; and all contracts made with any transportation company or others engaged in the business of transportation, for carrying freights or passengers over any railroad within the State at higher rates than those agreed upon by and between said railroad companies and transporters, are hereby declared void."

I desire to detain the Convention but a very few moments in reference to this amendment. All the propositions which have thus far been made in reference to discriminations relate to the prohibition against the officers of the company. Now, sir, I present to this Convention, in the proposition now before them, a total destruction of transportation companies; and as it is a new proposition, one involving immense considerations, I desire the attention of every member of the Convention to it.

The proposition of the gentleman from Philadelphia (Mr. Bullitt) strikes at a prohibition of the officers of the company from taking part in transportation. That does not reach the evil. The evil consists of these companies within the company forming "rings," and requiring by contract the transportation of their goods at rates greatly less than the maximum established by the charter of the company, and after they have thus made their contracts with the company they drive the shippers into the transportation companies and require them to pay the additional charge, whatever it may be. To illustrate: A transportation company makes an agreement with a railroad company by which they are to have goods carried for one and a half cents per mile per ton. I am driven to the shippers. I have one hundred tons of goods to send from Pittsburg to Philadelphia. I am told by these transportation companies that their rate is three cents per ton per mile. I am thus obliged to pay them one hundred per cent. more than they are paying the railroad companies. Now, sir, my idea in general is this: A railroad com-

pany, being a common carrier, is bound to take my goods at the same rate for which they will carry goods for anybody else, whether it be a company or not.

Sir, this is a growing evil in our Commonwealth. There is an aggregation of wealth growing up suddenly like Jonah's gourd, confined to a few men, who bask in the sunshine of these railroads. It is easily to be seen that if they are allowed to charge one hundred per cent. more than the railroads charge, they are making an immense profit; and from whom is that money taken? It is taken from the people in the first instance, and in the second place it is taken from the stockholders of the railroads. They are deprived of the benefits of the dividends which would otherwise be made by the adoption of a higher rate than is adopted between railroads and life transporters.

I am not unfriendly to the railroads; but, sir, I am here as a representative of the people whose business is with railroads, and of the stockholders in railroads, although I have no goods to transport over railroads and although I am not a stockholder in a single railroad company. I call the attention of the Convention to the fact that the rights of the people and the rights of the stockholders are invaded to such an extent as to call for the passage of just such a proposition as I have made.

I listened the other day with astonishment at the declarations of the honorable gentleman from Philadelphia, not now in his seat (Mr. Cuyler.) It struck me that if a stranger had entered the Convention then, not knowing what was going on, he would have supposed that Thomas A. Scott and John Edgar Thomson had been members of this Convention and had recently died. The eulogiums were strong, and I was going to say, but I will not say, fulsome; and in the midst of that eulogium I understood the honorable gentleman to say that these gentlemen and the officers of the Pennsylvania Central road never had committed a wrong against the people, that their course was a pure and upright one. I will only ask, when the Pennsylvania Legislature passed a law authorizing the sale of the public works for seven and a half millions with the tonnage tax on, and ten millions with the tax off, and that road stepped forward and took them at seven and a half millions with the tonnage tax on, was it right for them to go to the Legislature afterwards and ask for a repeal of that

tonnage tax, by which they would get the public works for two millions and a half less than their contract? Was that right? And yet these very officers were upon the ground and manipulated the Legislature in the passage of that infamous law. I will not allude to the mode or manner by which that law was passed. I desire to cover it up, to hide it from public view, for I have an entire loathing for it; and whenever I hear gentlemen on this floor talk about the purity of the Legislature in reference to that act I almost incline to put my hands upon my ears that I may not hear such a delusion attempted to be palmed upon an enlightened body of men such as I believe this Convention to be.

Now, Mr. President, this amendment strikes first at the railroad companies by declaring that they shall make no contract with a transportation company for carrying the goods of shippers for less than they will carry the goods of anybody else. It appends a punishment: It declares the contract void, and in addition to that it makes the company liable to a forfeiture of their charter, and until you append such a punishment as this, you will have this evil to continue. The second branch of the proposition provides that with regard to a contract made with the transportation companies, that such contract, if made at higher rates than the transportation company has agreed to carry for, under its contract with the railroad, that it shall be declared to be void; so that if the railroad company hereafter stipulates to carry goods for a transportation company for two cents per mile per ton the transportation company shall not charge me three cents per mile per ton. It strikes at the root of this evil, one which I think is very great, one which tends to the aggregation of sudden wealth in this Commonwealth amongst a few; for who cannot bear testimony to the fact that men who but to-day have been inaugurated as officers of a great railroad, like that of the Pennsylvania Central, worth nothing any one of them, become in the course of a few years possessed of an amount of wealth far beyond that of the aggregated wealth of the hundred lawyers of this Convention. Therefore I ask at the hands of every member of this body a careful consideration of this important proposition.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. S. A. Purviance.)

Mr. J. PRICE WETHERILL. I should like to ask the delegate from Allegheny one question. Incorporated companies, under the article now before us, have a right to place cars upon the road, the railroad company only furnishing the motive power and the road-bed. Certainly for the use of those cars there must be an agreement in regard to freight. I heartily agree with every word that the gentleman has said, and I am in favor of the amendment and believe if we can reach the transportation companies and keep them in check, we shall do good and accomplish a good purpose; and yet if they furnish the rolling stock they certainly ought to be entitled to something for that rolling stock, and they certainly ought to be entitled to a discrimination in favor of that stock as against freighters not furnishing rolling stock. I do not think the amendment as offered by the gentleman from Allegheny covers that ground.

Mr. S. A. PURVIANCE. In answer to the gentleman from Philadelphia, I will simply say that the railroad company, being a common carrier in the first instance, it is bound to carry my goods, and if it has the power under its charter to fluctuate between a maximum of three cents per ton per mile and a lower rate, all I ask is that it shall protect itself as far as necessary for furnishing cars, but that the rates shall be entirely uniform.

Mr. LILLY. I should like to ask the gentleman whether under the general railroad law the charge for freight covers the case of cars? The freight is a separate charge and does not cover the cars. The Reading railroad makes a contract with a mining company that is engaged in mining coal to carry its coal, but the rate of freight is a different thing from the use of the cars.

Mr. S. A. PURVIANCE. I answer the gentleman in this way: The railroad structure, the ground and the rolling stock of the railroad, constitute an entirety; it is but one railroad.

Mr. MANN. Mr. President: If I understand the section offered, we have already adopted all its principles, and the only thing now in it is imposing a penalty. Now, as the courts have abundant power to enforce the Constitution, it seems to me that it is hardly worth while to adopt a new section simply to put a penalty in. We have already adopted all the principles of this section, and I desire to record my vote against it, and call for the yeas and nays.

Mr. BOYD. I second the call.

The PRESIDENT *pro tem*. It requires ten delegates to second the call for the yeas and nays.

More than ten delegates rose.

Mr. BUCKALEW. I ask that the amendment be read again. Several gentlemen desire the reading.

The amendment was read.

Mr. BUCKALEW. I desire to inquire whether this is beyond the reach of amendment?

The PRESIDENT *pro tem*. It is not.

Mr. BUCKALEW. I move to strike out that part of the section which provides for the forfeiture of charter.

The PRESIDENT *pro tem*. The question is on that amendment to the amendment.

Mr. BUCKALEW. There ought always to be some proportion between offence and punishment. It would be very unreasonable that all the stockholders of the great corporations, many of them residing beyond the limits of the State, many of them widows, persons interested in estates, should be fined heavily in their property for the most minute misconduct of the officers of a company of which they were the stockholders. The slightest amount of discrimination—to the extent of five dollars—would throw all the immense property of the stockholders in railroad corporations into a condition of confiscation. If you make it illegal to make these contracts, they can be arrested at the instance of anybody by the courts in an equity proceeding. Besides that, the Legislature could pass any additional remedies in the way of punishment. I think this latter part of the section is so grievous that unless it is struck out I must vote against it.

Mr. S. A. PURVIANCE. I will say, in answer to the gentleman from Columbia, this: If a railroad company through its officer is guilty of a violation of a constitutional provision, such as several of those in the Constitution now, ought not the company to suffer? Why should they not suffer, because they are responsible for the election of their officers? Beside that, the language of this provision is "may be liable to forfeiture of charter." There may be cases in which a proper discrimination would be made. I hope, therefore, that this clause will not be stricken out.

Mr. HARRY WHITE. I sympathize entirely with the amendment offered by the delegate from Columbia (Mr. Buckalew.) I also sympathize with the spirit of the

amendment of the delegate from Allegheny (Mr. S. A. Purviance.) I regard this itself as an exceedingly important proposition; and the section of country which I more immediately represent is very largely affected by the evil at which this section aims. I recollect a few years ago when the Judiciary Committee of the Senate of Pennsylvania investigated this question of discrimination in freights; and this matter of fast freight lines, of "rings" within rings, was the subject of investigation more particularly, and I remember at that time the testimony of some of the most prominent business men in this Commonwealth, some of whom indeed are members of this Convention, who were large shippers, who detailed that their business was largely affected by the existence of these lines; and the report of that committee, together with the testimony as it stands, any gentleman who desires to be informed on the crying evil against the trade of Pennsylvania created by these transportation lines in which the officers of the roads are so largely interested, can find by reference to the proceedings of the session of 1869.

Whilst this is true, there is much wisdom in what the delegate from Columbia has said, that it is possible to make a penalty so severe, so out of proportion to the offence committed, that it will not be enforced, that its severity will prevent its enforcement. Therefore I am in favor of the amendment offered by the delegate from Columbia and am opposed to the forfeiture of the charter because of a malfeasance of this kind by the officers managing the road. It is a penalty out of proportion to the offence; but if it only affected the officers of the roads themselves we might not complain. But we must not understand that all corporations are presumed to be for the benefit of the stockholders; the rank and file of the people, persons who may have trust funds invested in the stock of this railroad will be largely affected.

For this and other reasons, which I could suggest if I desired to take the time of the Convention, I am in favor of striking out that provision and will vote for the amendment and then for the section.

Mr. KNIGHT. Mr. President: From the votes this morning it would seem that all these sections and perhaps many more will pass the Convention. If they do I think the railroads will require some

protection, and if in order, I want to offer this:

"No railroad company shall grant free passes or passes at a discount to any persons except officers or employees of the company."

The PRESIDENT *pro tem*. There is an amendment to the amendment of the delegate from Allegheny already pending.

Mr. KNIGHT. I will offer this when there is an opportunity.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia to the amendment of the delegate from Allegheny.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Allegheny as amended.

Mr. MANN. The yeas and nays were called for on that.

Mr. KNIGHT. Is my amendment now in order?

The PRESIDENT *pro tem*. It is.

Mr. KNIGHT. I move to add to the amendment:

"No railroad company shall grant free passes or passes at a discount to any person except an officer or employee of the company."

The PRESIDENT *pro tem*. I do not think it will come in well to any part of this proposed section.

Mr. KNIGHT. Then I will offer it as a new section hereafter.

The PRESIDENT *pro tem*. The Clerk will call the roll on the amendment of the delegate from Allegheny.

Mr. HARRY WHITE. Do I understand that this is a new section offered by the delegate from Allegheny as amended on the motion of the delegate from Columbia?

The PRESIDENT *pro tem*. That is the question.

SEVERAL DELEGATES. Let it be read.

The CLERK read the amendment as amended as follows:

"All discriminations made by railroad companies, being common carriers, in their rates of freights or passage over their roads in favor of transportation companies or others engaged in transportation, by abatement, drawback or otherwise, are hereby prohibited; and all contracts made with any transportation company or others engaged in the business of transportation for carrying freights or passengers over any railroad within the State at

higher rates than those agreed upon by and between said railroad companies and transporters are hereby declared void."

Mr. KAINE. I call for a division of the question, the first division to end with the word "prohibited."

Mr. MANN. I rise to a question of order. The yeas and nays having been ordered, it is too late to call for a division.

The PRESIDENT *pro tem.* The Chair sustains the point of order, if insisted upon. The Clerk will call the yeas and nays on the amendment of the gentleman from Allegheny as amended.

The question was taken by yeas and nays with the following result :

Y E A S .

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Black, Charles A., Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Cochran, Corbett, Corson, Cronmiller, De France, Elliott, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Harvey, Hay, Horton, Lambertson, MacConnell, McCulloch, M'Murray, Mantor, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reynolds, Russell, Smith, H. G., Smith, Wm. H., Struthers, Turrell, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—60.

N A Y S .

Messrs. Barclay, Bigler, Boyd, Brodhead, Broomall, Edwards, Fell, Green, Howard, Kaine, Knight, Lear, Lilly, Mann, Niles, Patton, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Walker and Wetherill, Jno. Price—22.

So the amendment as amended was agreed to.

ABSENT. — Messrs. Achenbach, Adicks, Ainey, Andrews, Armstrong, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Hanna, Hazzard, Hemphill, Heverin, Hunsicker, Landis, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Temple, Wetherill, J. M., Woodward, Wright and Meredith, *President*—51.

Mr. KNIGHT. I now offer the following amendment as a new section, to come in at this point :

"No railroad company shall grant free passes or passes at a discount to any person except officers and employees of the company."

Mr. COCHRAN. I am entirely in favor of the amendment offered by the gentleman from the city and hope it will be adopted, but I propose to amend it by adding the following, to come in at the end :

"Every ticket, except excursion tickets, issued to any passenger by any such company, shall entitle the holder of any such ticket to transportation over the works of such company from his place of departure to his place of destination either by continuous train or by any other train on which the same rate of fare is charged, without any additional charge or subjecting him to any inconvenience because of his stopping off at intermediate points."

I merely wish to say in regard to this amendment—I do not intend to detain the Convention long on this subject—that it is designed to prevent an evil which I think ought to be corrected and which it is probably necessary for us to correct here. A very great injury is done to parties by compelling them to pay double fare in case of their merely stopping off at an intermediate point. There seems to be no necessity why that should be done, and why a man should be compelled to go clear through to his destination on the train on which he starts. If he fails to do so, the punishment inflicted is the punishment of paying fare over again. I cannot see any justice in that, and the fact is that in very many cases these tickets are given in such a way that parties can stop off at particular points and use their tickets at any time.

I give this illustration : A man can get a ticket at some western point all the way through to the city of Baltimore cheaper than he can buy it to the town of York, sixty miles less distant. These tickets are so arranged that he can take off a coupon when he gets to York and have left a coupon from York to Baltimore, which he can sell to another party at any time. I know that this has been done, because I have had it from gentlemen who have done it more than once. Why, then, should any penalty be imposed upon a man merely for stopping off at an intervening point and getting on another train? It certainly cannot be because

the railroad company is inconvenienced by it, because if that were so the same argument would apply to the case which I have cited. There would be no inconvenience to the railroad company. It is useless to say that a railroad company gets up its trains to accommodate a certain number of passengers that are to go in any special train. That is not so. It is impracticable, because no company knows the number of passengers who are to go on any train, in advance of its starting; and there is no train that runs, unless it is a through train that does not stop, which will not take up a passenger at any point where it stops, provided he pays his fare. Why, then, should a man who has a ticket entitling him to ride from Philadelphia to Harrisburg, and who may desire from any business whatever to stop over two or three hours in Lancaster, be required to pay an additional fare from Lancaster to Harrisburg, as a penalty for his stopping off?

I know that it has been decided, very wrongfully in my judgment, in our courts that a man who takes a ticket of that kind without any notice on it that he is not permitted to stop off, if he does stop off may be made to pay additional fare. That has been a decision of the Supreme Court. They say that he is bound by a notice he never saw. The notice is not even printed in the smallest possible type on the back of his ticket, but it may be stuck up in some office where it has never attracted the attention of the purchaser of the ticket. I think it is nothing more than justice that passengers in this State should have a right of this kind to stop off at any point, and be carried on to their place of destination without additional charge being made. The company have actually no greater expense, and the argument that there might be any inconvenience to them arising from it seems to me to be without foundation.

Mr. KNIGHT. I trust that this amendment will not prevail. We, this morning, voted down a similar clause proposed by the gentleman from Lycoming (Mr. Armstrong.) The section that I have offered is short, plain and can be easily understood. If the gentleman's amendment is coupled with it it may embarrass it in such a way as probably to interfere with its passing. If the gentleman is desirous of having his views submitted to the Convention, I much prefer

that he would offer them in the form of a separate section.

Mr. BOYD. I rise to a point of order. Is the amendment to the amendment germane to the proposition to which it is offered?

Mr. COCHRAN. I think it is.

The PRESIDENT *pro tem*. It is not so ungermane that the Chair will not recognize it as an amendment.

Mr. KNIGHT. I hope the gentleman will withdraw it.

Mr. COCHRAN. I do not desire to embarrass the amendment of the gentleman from Philadelphia, and therefore I will withdraw my amendment for the present.

Mr. HARRY WHITE. I move to amend by striking out the words "except officers and employees."

Mr. KNIGHT. I hardly think that would be proper because the conductor and brakemen of trains are employees of the road and they must ride on the train.

Mr. BIDDLE. Let us take the vote on it.

Mr. HARRY WHITE. I merely want to explain my purpose. The word "employee" is a very large and comprehensive one. If we want to strike, as I have no doubt my friend from Philadelphia does, by this proposed new section, at what some regard as an evil—I do not know whether all the members of this Convention so view it or do not—let us make it effective. The word "employee" is a very comprehensive expression. It is customary for railroad officers to issue, as matters of courtesy, passes to members of the Legislature and members of Congress. I do not know that some people do not consider that they are actually employees of the railroad companies.

Mr. BOYD. I call for the orders of the day.

The PRESIDENT *pro tem*. The hour of one o'clock having arrived, the Convention will take a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

RAILROADS AND CANALS.

The Convention resumed the consideration on second reading of the article on railroads and canals.

The PRESIDENT *pro tem*. When the Convention took its recess the pending question was on the amendment of the delegate from Indiana (Mr. Harry

White) to the amendment of the delegate from the city, (Mr. Knight,) offered as a new section. The amendment and the amendment to the amendment will be read.

The CLERK. The amendment was to insert as an additional section :

"No railroad company shall grant free passes or passes at a discount to any person except officers or employees of the company."

The amendment to the amendment was to strike out the words "except officers or employees of the company."

MR. HARRY WHITE. Mr. President: I desire to be heard upon that amendment. I am perfectly sincere in offering it. It is consistent entirely with the amendment offered by my friend, the delegate-at-large from the city of Philadelphia (Mr. Knight.) I am entirely sure that it is perfectly practicable to adopt this amendment. I recall the attention of the Convention to the fact—

MR. BOYD. I rise to a point of order. The gentleman has already spoken on this amendment, and he is therefore out of order.

MR. HARRY WHITE. When the Convention adjourned at noon I was on the floor.

The PRESIDENT *pro tem*. The delegate from Indiana had only spoken eight minutes. He has two minutes of his time remaining.

MR. BOYD. I withdraw my point of order.

MR. HARRY WHITE. I protest that I had not spoken eight minutes, but I desire to be brief in my remarks now.

The PRESIDENT *pro tem*. The Chair is so informed.

MR. HARRY WHITE. I am perfectly sincere in offering the amendment, for if we are to adopt a proposition of this kind I submit it is entirely impracticable to insert the exception allowing passes to be issued to employees of the road. Delegates in this Convention who are business men can recall to their minds the ingenuity with which officials of railroad companies can imagine temporary employment upon the part of individuals applying for passes or persons whom they may desire to accommodate, to evade the letter of the law while they come within its spirit.

I am entirely sincere in the amendment I offer. If we are really to strike at this system, if there is abuse in the matter of issuing passes, which I am not prepared

here to say, desire this Convention to go the whole length, not to stop half way, not to allow a bartering with pretexts that will allow them to select their favorites for the purpose of giving them passes and exclude those who are actually entitled to them for charitable or indigent reasons.

I know that a great many railroad passes are issued. I do not think any man can be influenced in his vote or in his action by the privilege of a ride upon the road of any corporation of this Commonwealth by virtue of a free pass. I submit, if there is any corruption in our Legislature, if there is any corruption in any of our public assemblies, it is not to be attributed to the issuing of passes. Men who will sell themselves and sell their votes require a greater consideration than the mere privilege of riding upon these roads by themselves or their friends.

I submit that it is perfectly practicable to prevent the issuing of passes to anybody. It may be said that employees must have passes from time to time to transact the business of the company. Let the companies pay them their expenses, add to their salaries, and in that way reach the privilege of issuing passes. I know that members of the Legislature, I know that the members of Congress, I know that United States Senators and other officials in this Commonwealth receive passes, and I verily believe that fact has no influence whatever upon their official conduct; but I am not going to be a laggard in the march for reform in this regard, if the majority of this Convention think it is a reform; and if we do take this step I do not want to stop half-way, but desire to go the whole length, and for that reason I have offered the amendment which is now before the body.

MR. CURTIN. I sincerely trust that the subject of issuing free passes on the railroads of the State will be treated by this body as a serious question, not only for the benefit of the railroads themselves, for surely they cannot ask that free passes shall be granted to any person, but also for those who are traveling.

Sir, the man who ought to have a free pass never gets it. The rich man gets the pass because he has influence. The member of the Legislature gets the pass because he has votes in that body and can pass bills. The members of this Convention get passes because they have influence in passing upon the Constitution. Whether

it affects the mind of the member of the Legislature or the member of this body is of no consequence at all; it is the fact that such persons get passes.

That a great public work should not be permitted to give passes to the persons employed on that public work is to me a most remarkable proposition, and I am surprised at the gentleman from Indiana offering such an amendment. That the officials of a railroad should not be permitted to pass over it at the pleasure of the company seems improper and unjust. While the gentleman says he is in sober seriousness, I think that he either has designs on this wholesome provision in the Constitution, or that his remarks are to be taken in a Pickwickian sense; and sometimes I think that the intelligent delegate from Indiana is slightly Pickwickian in this Convention. [Laughter.] To the exercise of charity by railroad companies to paupers and indigent people there can be no objection; but that passes shall be given by a railroad company to the few and the favored, and those who ought to have them shall not get them, is a distinction in society which is unjust, and it is a means of corruption which is well known.

If the railroad pass was confined to the member of the Legislature alone, it might be proper, and if we put into the Constitution a section that all members of the Legislature during their official terms should travel free on the railroads of the State, it might be a judicious provision; I think they have a provision of that kind in New Jersey; but when you suffer a railroad company not only to give the member of the Legislature his pass, but to as many of his constituents as he chooses to ask for or to give a defined number which he may sell at his pleasure, which is an indirect means of getting at the conscience of the member which your constitutional provision against bribery or the double-stitched oath of Judge Black might not fully reach.

I trust, therefore, Mr. President, that this question will be seriously treated by this Convention. I lived in a despotic government for three years and a half, where such a thing as a free ticket on a railroad is unknown. The Czar of Russia pays his fare when he travels on the railroads in his own empire, precisely as the humblest citizen of his empire. I do not think the system of giving passes prevails in Germany, or France, or to any large extent in England. It is only in

this country that the stockholders of railroads are taxed to pay for the official indulgence given by the controllers of their work to their favorites, to members of the Legislature, and to those in official station, to judges and others. It is one of the expectations of the people of Pennsylvania, that, fairly and honestly this Convention shall put into the Constitution an enactment which shall forever put a stop to the granting of such indulgences, and I trust that this Convention will meet that public expectation promptly.

Mr. HOWARD. Mr. President: I have no doubt that this Convention mean to treat this subject seriously, and no doubt they intend to adopt this amendment, and I hope it will be adopted unanimously. I do not agree altogether with the delegate-at-large, the gentleman from Centre, that the issuing of free passes comes off the stockholders. I believe it comes off the shippers and the men who have business on the road. Everybody has to be taxed a greater rate to make up for this loss, and so the community after all have to pay for these passes. It would be far better for the community, no doubt, and far better for the railroads in the end if we adopted some provision of this kind. If we adopt it, then the railroads are done with importunities from everybody. I think, however that they should have a right to pass without any objection whatever their officers, and I do not know why they should not pass their employees on the line of their roads.

The best law that ever was made can be evaded. We have a law that "thou shalt not kill, and yet men kill; we have a law that "thou shalt not steal" and yet men steal; we have a law that men shall not commit burglary, and yet they do it; they violate the ten commandments and all the statute laws now existing.

I can see no reason why the amendment of the delegate from Indiana should be accepted by this body. I should hope it would be voted down and that we would adopt the proposition presented by the delegate from Philadelphia unanimously and let the people of the Commonwealth understand that we mean earnestly to effect a reform upon this question.

Mr. KNIGHT. I trust the amendment of the gentleman from Indiana will be voted down. It would be impossible to manage a railroad if the conductor, brakemen, firemen, engineers and other

employees of a company could not travel on its trains to take them along. I offered this section in entire seriousness. In the early part of the sessions of this Convention I declared that if such a section was to be put in the Constitution it should be put in here. I know of a road of this State to which it costs half a million of dollars a year for free passes. I know further that those people who, as a general rule, ought to be entitled to free passes, if anybody, do not get them; and I know that it has a corrupting influence on parties in high position, because they can get passes whenever they want them.

If passes were done away with the public generally could travel at a lower rate, because there would not then be three traveling in a car on a free pass and two paying fare; all would travel on the same fare alike, and the company could take them at a lower rate. This section will not affect excursion tickets or coupon tickets, because it does not fix any rate on tickets; it only says that when a rate is fixed by the company it shall not be deviated from, but all persons, rich and poor, shall alike travel on the same terms.

A director is not an officer of a road, and under this section a director would have to pay his fare. Some of the best managed roads of this country do not issue any free passes. I am a director in three companies, the Pennsylvania railroad company, the North Pennsylvania railroad company, and the Philadelphia and Trenton railroad company, which connect directly with the Philadelphia, Wilmington and Baltimore railroad company, and when I go to Baltimore I always buy my ticket. There is no way of getting a free pass over it. If we were to adopt this section, it would save a great deal of trouble, a great deal of corruption, and the result in my judgment would do a great deal of good.

Mr. COCHRAN. I do not rise to discuss this matter. I merely wish to suggest to the consideration of the gentleman from Philadelphia whether it would be inexpedient to insert in his amendment, as the Committee on Railroads and Canals did in the section which was rejected in committee of the whole, to include among the excepted persons not only officers and employees, but poor and indigent persons who are objects of charity.

Mr. KNIGHT. I do not want to include that exception.

Mr. COCHRAN. It seem to me that railroad companies ought not to be prevented from doing acts of charity.

Mr. CORSON. It seems to me that it is utterly impossible to meet this case by a constitutional provision. If railroad companies are to derive any advantage from this, let them make it a general regulation of the company. If we undertake to go into these details, we shall never get through with our work, and we shall have a Constitution so long that it will fall to pieces of its own weight. The idea of our attempting to say here that no man, woman or child in the State of Pennsylvania shall have a free pass unless employed on a railroad is perfectly absurd. The man who works on a farm is as much entitled to a pass as a man who works for a railroad company; but that is a matter for the railroad companies to regulate. I think it is greatly to their credit that the Governor of Pennsylvania and the President of the United States do not have to pay for their tickets, and in that respect we are far ahead of Russia. I think it is too late in the day to turn us back to the dynasties and the despotisms of the old world. It is time for us to put a stop to all this special business. I believe that this section is about as wise as one-half of the sections that were proposed by this committee on the subject of railroads, and I believe when we come finally to vote upon it, it will share the fate of one half of these propositions and be voted down.

Mr. ALRICKS. Mr. President: We have all been anxious that this provision should be introduced into the Constitution. It comes from a source we have not expected. I feel my indebtedness to the gentleman for making the suggestion. The committee had reported it. Here is their own report:

"No railroad, canal or other corporations engaged in the business of a common carrier or transporter shall permit the gratuitous transportation over its road or canal of any person or persons, except its own officers or employees, or poor and indigent persons."

Now, I am obliged to the gentleman for it, because I believe as it was reported by the committee we should have adopted it.

I hope that the amendment offered by the gentleman from Indiana will not prevail, for the reasons that have been given by the distinguished delegate from Centre (Mr. Curtin.) It appears to me a frivolous objection, and therefore I trust that we will not think for one moment of

adopting it. We ought not to allow the directors of companies to be continually annoyed by persons for passes; just as the judge has gone upon the bench who was to try a cause in which the railroad company was a party, he has been tendered his pass, and after the jury were called to the bar and they were challenged four jurors had free passes in their pockets, and they had been called to sit upon a jury in which the railroad company was a party!

Now, Mr. President, I know the evil that this system is working. It is ruinous to shareholders; it is ruinous to the morals of the country. It has demoralized the Legislature, and I for one trust that this Convention will vote down the amendment and unanimously adopt the section that has been offered by the gentleman from Philadelphia.

Mr. CARTER. Mr. President: I hardly suppose that the gentleman from Montgomery (Mr. Corson) was in earnest in the expression he made of the hope that he had that this section would be voted down unanimously. I hope it will be voted *in* unanimously, and I think it would do the Convention vastly more credit than the other course. If this was a matter in which only the interests of the railroads were concerned, and not the public at large, it would be something, perhaps, not fit to introduce into the fundamental law, but we have reason to believe that it has had a deteriorating influence upon the public, and that it has been abused. The gentleman from Indiana says that free passes have had no bad effect, and never will have any such effect. I can scarcely believe that he is serious. I can scarcely believe it possible. So far as the money value of the pass goes it is an indirect bribe or inducement held out for favorable consideration.

The gentleman from Centre (Governor Curtin) mentioned to me, sometime back, that he had known as many as thirty passes given to each of the members of the Legislature and Senators. These were matters of familiar knowledge, and it is idle to attempt to justify the practice.

Mr. HARRY WHITE. Allow me to interrupt the gentleman. May I ask the delegate whether he, as a member of this Convention, has accepted and traveled on a free pass or not?

Mr. CARTER. You may ask that with perfect safety. I have not; nor have I used any; I thought it was proper for me to return my passes and I did so.

Mr. HARRY WHITE. I am satisfied.

Mr. CARTER. What I did or did not do does not matter. I only say it is a matter of notoriety that passes have been given and given extensively in cases where thought to be useful. As I was saying, the gentleman from Centre stated that he had known between thirty and forty passes given to each member. These possessed a certain market value and no doubt were supposed by the donors to be well applied. Will gentlemen say that there was nothing corrupt in that? I do not say that those individuals were corrupted by it, or at least influenced, or they were more than human, and it was unquestionably of a corrupting character. It could not be otherwise in the nature of things, and therefore it does concern us that if we wish to purify the legislative bodies, if we wish to keep pure the judiciary, that we remove this temptation. I think it is eminently proper this thing should be done.

The instance was referred to of the Emperor of Russia, and it was sneered at as taken from one of those despotic dynasties, as the gentleman from Montgomery termed them. I apprehend that we can copy what is good from any source with propriety.

Mr. BIDDLE. Certainly; "business is business."

Mr. CARTER. It is a good example; and the source from which this amendment came, the most excellent delegate from Philadelphia, who sits behind me, (Mr. Knight,) having known and seen the necessity of such an enactment, entitles it to consideration. It may not answer all the purposes intended, but unquestionably it is a movement in the right direction. I hope, therefore, that it will pass.

One word more. The late delegate from Philadelphia, (Mr. Gowen,) among certain reforms in reference to railroads which he said it was the duty of this body to pass, specified this matter of free passes as one of them. No doubt he had seen the abuses of the system, and was desirous to correct them.

Mr. SIMPSON. I shall vote for the amendment of the gentleman from Indiana, because if this inflexible rule is to be put in the Constitution it should bear alike upon every human being; there should be no exception to the rule. If the employees and officers of a railroad company are required to travel on the road, the company can furnish them with tick-

ets and charge them to expenses, and there should be no device and no means by which any human being could travel free of charge on the railroads. If it is to be put in the Constitution, let us make it so inflexible that it cannot be evaded or escaped from under any circumstances. Unless you adopt the amendment of the gentleman from Indiana, you will have railroad companies who want to avoid this provision employing thousands and tens of thousands of persons to do trivial work for the mere purpose of furnishing them the means of riding on their road free.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Indiana (Mr. Harry White) to the amendment of the delegate from Philadelphia, (Mr. Knight,) to strike out the words, "except officers and employees."

Mr. BOYD. On that question I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken resulted as follows:

YEAS.

Messrs. Baer, Bailey, (Huntingdon,) Boyd, Broomall, Brown, Campbell, Corbett, Corson, Edwards, Fulton, Gilpin, Green, Guthrie, Hanna, Hunsicker, Lear, Lilly, MacConnell, M'Murray, Mann, Patterson, T. H. B., Purman, Purviance, Sam'l A., Russell, Simpson, White, Harry and White, J. W. F.—27.

NAYS.

Messrs. Alricks, Bally, (Perry,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Brodhead, Buckalew, Calvin, Carter, Cochran, Cronmiller, Curtin, Dallas, De France, Elliott, Ewing, Funck, Hall, Harvey, Hay, Horton, Howard, Kaine, Knight, Lamberton, Landis, M'Culloch, Mantor, Newlin, Niles, Patton, Read, John R., Reed, Andrew, Reynolds, Rooke, Smith, H. G., Smith, Henry W., Smith, Wm. H., Temple, Turrell, Van Reed, Walker, Wherry, White, David N. and Worrell—47.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Adicks, Ainey, Andrews, Armstrong, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson,

Hazzard, Hemphill, Heverin, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, Jno. Prieg, Woodward, Wright and Meredith, *President*—59.

Mr. HARRY WHITE. I move to amend the amendment, by adding after the word "company," the words "traveling on the business of such company," so as to read:

"No railroad company shall grant free passes or passes at a discount to any person, except officers or employees of the company traveling on the business of such company."

Mr. KAINE and others called for a division on agreeing to the amendment.

Mr. HARRY WHITE. Before a division is called or a vote is taken, I submit that if we are sincere in this matter and want to except officers and employees, this expression should be included. It is perfectly reasonable and proper. I submit that there are gentlemen, officers of railroad companies, traveling in palace cars and indulging in luxuries that the stockholders of such companies cannot indulge in.

Mr. KAINE. I have just a word to say in reply to the gentleman from Indiana. A pass is given by a railroad company to one of its employees. He proposes to insert an amendment there that the employee shall only use that pass when he is traveling on the business of the company. How are you to make that definition? Are you going to leave it to the employee to say "now I am going on business of the company and I will use this pass," and "now I am going on my own business, and I will pay my way." How is the officer or conductor of the road to know anything of that kind? The thing is utterly impossible.

SEVERAL DELEGATES. Swear him.

Mr. BUCKALEW. I desire to say a few words upon the main question, as I perceive we are to have debate pending amendments, and I may as well say what I desire now. I intended originally to vote against this proposition abolishing free passes; but I have changed my mind, and now, being one of those who intend to vote against this proposition—

Mr. M'MURRAY. I rise to a point of order. Is it in order to discuss the question

now while the vote is being taken and a division called for?

The PRESIDENT *pro tem.* A division was called for.

Mr. M'MURRAY. When the vote is being taken, I submit whether discussion is in order.

The PRESIDENT *pro tem.* The yeas and nays were not called for. The delegate from Columbia is in order.

Mr. BUCKALEW. I say, sir, that now, being classed among the supporters of this proposition, I appeal to its friends to keep all amendments off. It is obviously intended by putting amendments on this proposition to break it down. Of course, that will be the ultimate effect. By the section itself we have a simple rule, that railroad companies shall not issue free passes unless to their officers and employees, of course while they are in their employment or officers of the company; and if there is any abuse, we must leave it to the Legislature to correct it.

But I undertake to say that this amendment will be one of the most acceptable amendments that you can propose to the railroad companies themselves. The officers of railroad companies now are harassed, absolutely harassed with applications from all quarters for free passes, and so long as the fashion of issuing them is permitted to exist at all, the harassment of railroad companies will continue, and they will be obliged to do more than the interests of their own stockholders require, under this general system of favoritism. I believe that every well regulated railroad company in the State will rejoice in accepting, along with their fellow citizens, an amendment of this kind. It will not only relieve them from great abuses in the management of their own companies by ending the issuing these passes on the principle of favoritism, but it will also protect the interest of the stockholders and relieve the companies from a great deal of public odium which now attends upon the pass system; and while that is the aspect of the question as to the railroad companies themselves, it will be about the same as to the great mass of the community outside of those organizations.

The amendment will be very acceptable to the people, and they will accept it as a proclamation against the exercise of a species of illegitimate influence of railroad companies, not only upon members of the Legislature but upon the judges of our courts, upon the jurymen who are im-

pannelled in our courts; and upon men of high influence and position throughout the Commonwealth who apparently are subsidized to some extent by these corporations by the issuing of these passes to them.

Taking into account that these are the views that honorable railroad companies and the general public will hold upon this subject, I believe this to be one of the most popular amendments which we can place in the Constitution.

Yet I can perceive that it is an imperfect measure in itself, and that there will be various modes of evading it to some extent. You must permit the issuing of commutation tickets, and they may be issued at nominal rates if the railroads choose, and in other respects to some extent the operation of this amendment may be avoided. But as to that you can rely to some extent upon the interest of the railroad companies and their stockholders against the issuing of free passes. This will be to some considerable extent a security against attempted evasions.

Mr. TEMPLE. Mr. President: I have not uttered a word since the railroad report has been under consideration. I desire to say that I was in favor of this reform when this subject was before the Convention before; but, like the distinguished delegate from Columbia, I have changed my mind upon this subject; and it is for this reason that I desire to express my views in about a dozen words before the vote is taken.

The reason I shall vote against this proposition is that I believe it to be a blind only for the purpose of giving a railroad corporation an opportunity to refuse railroad passes to the citizens at large, whereas they can issue them to politicians and legislators and others in authority, without stint.

Now, Mr. President, I submit to the delegates upon this floor that it is a mere blind to undertake to place a thing like this in the Constitution. It is admitted here by delegates that members of the Legislature can become employees of a corporation temporarily. It has been admitted also by delegates upon this floor that legislators can buy commutation tickets for, if you please, five or ten cents apiece, and yet the great bug-bear will go out into the community, leaving the business interests and the business men of this State to believe that this Convention has effected a great re-

form in this respect, when it really has effected nothing.

I do not believe in such a reform, and I say to delegates upon this floor if this be an abuse at all, which I do not undertake to say here, so far as legislators are concerned, it is traceable directly to the corporations themselves.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Indiana (Mr. Harry White) to the amendment of the delegate from the city (Mr. Knight.)

Mr. HARRY WHITE. I call for the yeas and nays.

Ten members rose to second the call.

The *PRESIDENT pro tem.* The call is sustained.

The question was taken by yeas and nays with the following result :

Y E A S .

Messrs. Alricks, Baer, Baily, (Perry,) Broomall, Campbell, Corbett, Corson, Cronmiller, Edwards, Fulton, Gilpin, Guthrie, Hanna, Howard, Hunsicker, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Patterson, T. H. B., Patton, Purviance, Sam'l A., Read, John R., Russell, Simpson, Smith, Henry W., White, David N., White, Harry and White, J. W. F.—31.

N A Y S .

Messrs. Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Chas. A., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Carter, Cochran, Curtin, Dallas, De France, Elliott, Ewing, Funck, Green, Hall, Harvey, Hay, Horton, Kaine, Knight, Lambertson, Landis, Newlin, Niles, Purman, Reed, Andrew, Reynolds, Rooke, Smith, H. G., Smith, Wm. H., Temple, Turrell, Van Reed, Walker, Wherry and Worrell—43.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazzard, Hemphill, Heverin, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsops, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, J.

Price, Woodward, Wright and Meredith, *President*—59.

The *PRESIDENT pro tem.* The question recurs on the amendment of the delegate from Philadelphia (Mr. Knight.)

Mr. CAMPBELL. I move to amend the amendment, by striking out all after the word "section" and inserting the following :

"No corporation engaged in the business of a common carrier shall permit the gratuitous transportation over the road or canal owned or controlled by it of any person except its own officers and employees."

That is stronger than the section offered by the gentleman from Philadelphia (Mr. Knight.) It is substantially the section reported by the Railroad Committee. I like the formation of it better, and it will prevent any possibility of the railroad company evading this prohibition. I propose to call for the yeas and nays upon it.

Mr. NILES. I should like to inquire if the amendment of the gentleman from Philadelphia will allow an employee to ride upon a gravel train? It seems to me it will not.

Mr. CAMPBELL. Yes, it will.

Mr. KNIGHT. I do not think the amendment is as strong as the proposition I offered. The language of my section is that there shall be no ticket issued at a discount. The amendment does not cover that point.

Mr. COCHRAN. The amendment offered by the gentleman from Philadelphia, (Mr. Campbell,) and which is now pending, was considered in the Committee on Railroads, and was reported in this form. I think it is probably better expressed than the one originally offered by the other gentleman from Philadelphia, (Mr. Knight,) and I certainly prefer the form of expression of that amendment to that of the original amendment. It differs from it in extending also to poor and indigent persons.

Mr. CAMPBELL. I call for the yeas and nays on the amendment to the amendment.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. CARTER. Let it be read.

The CLERK read the amendment to the amendment.

Mr. KNIGHT. Now, I should like to say one word. It will be observed that the language of that amendment is that no railroad shall permit of gratuitous

transportation. The language of my amendment is that the tickets shall not be free or sold at a discount. If a man can get a ticket for a five cent piece, it is not gratuitous; he pays something for it. I do not think the amendment is in any way a substitute for the one offered by myself.

The *PRESIDENT pro tem.* The yeas and nays have been ordered, and the Clerk will call the roll.

Mr. CAMPBELL. I withdraw my amendment and will vote for the amendment of the gentleman from Philadelphia, as there seems to be some difference of opinion on the subject.

The *PRESIDENT pro tem.* The question then recurs on the amendment of the delegate from the city (Mr. Knight.)

Mr. HANNA. I move to amend the amendment by adding the following:

"And shall provide every purchaser of a ticket with a seat in the cars of said company and with ice in the water coolers." [Laughter.]

Mr. CAMPBELL. I hope such nonsense as that will be voted down at once.

Mr. EWING. I submit that that is not in order.

The *PRESIDENT pro tem.* The amendment to the amendment is not in order. The question is on the amendment of the delegate from the city (Mr. Knight.)

Mr. CAMPBELL. On that question I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken resulted as follows:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Calvin, Campbell, Carter, Cochran, Cronmiller, Curtin, Dallas, De France, Edwards, Ewing, Fulton, Funk, Gulpin, Green, Guthrie, Hall, Heverin, Horton, Howard, Kalne, Knight, Lamberton, Landis, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Newlin, Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, Van Reed, Walker, Wherry, White, David N., White, J. W. F. and Worrell—62.

NAYS.

Messrs. Armstrong, Bannan, Bullitt, Corbett, Corson, Elliott, Hanna, Harvey,

Hay, Hunsicker, Lilly, Niles, Simpson, Temple and White, Harry—15.

So the amendment was agreed to.

ABSENT—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazzard, Hemphill, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, Jno. Price, Woodward, Wright and Meredith, *President*—56.

Mr. COCHRAN. I offer the following as a new section, to come in at this place:

"Every ticket except excursion tickets issued to any passenger by any railroad company shall entitle the holder of such ticket to transportation over the works of such company from his place of departure to his place of destination, either by continuous train or by any other train on which the same rate of fare is charged, without any additional charge or subjecting him to any inconvenience because of his stopping off at intermediate points."

I merely wish to say that this is the same form which I offered as an amendment to the section proposed by the gentleman from Philadelphia this morning, and I withdrew it in order that he might have his section voted on without any embarrassments. I ask that this may be considered and disposed of, and I ask for the yeas and nays on its passage.

Mr. BRODHEAD. I rise to a question of order. That having been already voted down, is out of order now.

The *PRESIDENT pro tem.* It was withdrawn, not voted down.

Mr. BRODHEAD. A similar section was voted on.

Mr. HOWARD. It was voted down in committee of the whole in connection with the same subject offered by the delegate from Philadelphia, (Mr. Knight,) but has not been considered at all at this stage.

Mr. CAMPBELL. I call for the yeas and nays.

Mr. CALVIN. I second the call.

The *PRESIDENT pro tem.* Do ten members rise to second the call?

More than ten members rose.

The PRESIDENT *pro tem.* The call is sustained, and the Clerk will proceed with the call.

Mr. LILLY. I offer the following as an amendment,

"Provided, That the conductor shall punch the ticket of every passenger on passing each station."

I simply have offered this amendment to show into what a ridiculous position we are getting. We are running this whole thing into the ground, and putting the smallest things possible into the article, probably leaving out, at the same time, some of the larger things that ought to go in; of course I was not serious in offering this amendment—and I now withdraw it.

Mr. CORBETT. I hope that the Convention will pause here. It will be perceived that we are running into very small details in this article. We are undertaking to control things that ought to be left to the Legislature. We can certainly trust that body with something. We are not making an article declaring general provisions that are to govern railroads, but we are descending to details. What is this proposition? What is it but a proposition to regulate tickets and the manner in which they shall be used by railroads. If a man purchases a ticket from one point to another, he understands the rule of the company. If the rule of the company be that he may upon that ticket ride continuously upon one train, he understands that fact distinctly. If he wants to drop off at a point in his journey, he can purchase his ticket to that point and drop off, and then he can purchase a ticket from that point to the end of his journey, and he is not in any sense compelled to pay two fares. It is all wrong for us to attempt to descend to regulate this matter by a constitutional provision. The fact is, I think, that we have enough of detail in this article now, when it comes up as an article before the people, to defeat it. There is enough to defeat it, and it ought to be defeated. I hope the Convention will pause. We cannot possibly put in this article provisions that are to regulate railroads for all time to come, and it is time I think that we stop.

Mr. HOWARD. Before the vote is taken, I should like very much myself, personally—of course I have no right to dictate terms to anybody else—to state that I would very much prefer that the offering of new sections should be stopped for the present, in order to allow us to

finish the work of the Committee on Railroads and Canals. I think the way we are going on is only calculated to embarrass the rest of our work, and I think it is due to the Committee on Railroads that the Convention should go forward with their report, and complete it first. We have now stopped here, in the middle of the report, and clogged up enough new sections for two railroad articles, after we had adopted several sections that preceded them, and while we have several sections still under consideration. I now propose that we go straight on and complete this report before any more new sections are introduced.

The PRESIDENT *pro tem.* The Chair would state that this section was offered by the chairman of the Committee on railroads, and as such the Chair certainly did not deem it his duty to interfere, although he believes that the suggestion of the gentleman from Allegheny is wise and proper.

Mr. COCHRAN. We have just passed a section which was reported by the Committee on Railroads and Canals and which was stricken out by the committee of the whole. This new section which I offered was also part of the same section which was originally reported along with that which we have just adopted. As far as this matter of going into detail is concerned, this is a question of as great public interest, and is as much due to the protection of the parties having charge of our public highways, as any other that we have adopted, because it has been determined by the highest judicial authority of this State that whether a man may have seen a notice or had a notice put on his ticket or not, he shall not be permitted to stop at any intermediate point and then go on in another train unless he pays full fare.

Mr. MANN. I think it would be wise to postpone the consideration of this section for a short time, so that we can have a full code of regulations by which the railroad companies shall be run. We seem to have come down to that now, and I do not think that we ought to stop at a little matter of issuing tickets. We ought to pass an entire set of rules for the management of the railroads in the State. We have undertaken to frame laws for the Legislature. Now we have commenced framing laws for the railroads. I believe next we shall commence to frame rules for school directors.

The PRESIDENT *pro tem.* The question is on the amendment. The yeas and nays

have been called on that question and the Clerk will proceed with the call.

The yeas and nays were taken, and were as follow, viz:

Y E A S .

Messrs. Alricks, Baer, Baily, (Perry,) Boyd, Calvin, Campbell, Carter, Cochran, Curtin, De France, Funck, Gilpin, Hanna, Howard, Landis, Lear, M'Culloch, Patterson, T. H. B., Reynolds, Russell and Turrell—21.

N A Y S .

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Brodhead, Broomall, Brown, Buckalew, Bullitt, Corbett, Corson, Cronmiller, Curry, Dallas, Edwards, Elliott, Ewing, Fulton, Green, Guthrie, Hall, Harvey, Hay, Heverin, Horton, Hunsicker, Kaine, Lamberton, Lilly, MacConnell, Mann, Mantor, Newlin, Niles, Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Simpson, Smith, H. G., Smith, Henry W., Smith, William H., Temple Van Reed Walker, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—55.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazard, Hemphill, Knight, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purviance, Jno. N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, John Price, Woodward, Wright and Meredith, *President*—57.

The PRESIDING OFFICER [Mr. Simpson in the chair.] The Clerk will read the next section of the article.

The CLERK read as follows:

SECTION 9. No railroad, canal, or transportation company shall issue any stock or bonds, except for money, labor, or property actually received and applied to the purposes for which such corporation was created, and all stock dividends and other fictitious increase of the capital stock or indebtedness of any such corporations shall be void. The capital stock and corporate indebtedness of railroad, canal, or other corporations engaged in

the business of common carriers or transporters shall not be increased, except in pursuance of a general law, nor without the consent of a majority in value of the stockholders of such corporation first obtained at a meeting to be held after sixty days' notice given in pursuance of law. All laws heretofore enacted by which an increase of the capital stock or of the bonds or other evidences of indebtedness of any corporation, railroad or canal has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts made and executed in accordance therewith.

Mr. BRODHEAD. I move to strike out in the fourth line the words "all stock dividends and other" and insert the word "any," so as to make the section read—

Mr. COCHRAN. I appeal to the gentleman from Northampton to let me offer a section as a substitute for this for the purpose of perfecting it, and then, if agreeable to him, he can move his amendment.

Mr. BRODHEAD. If the amendment is agreeable to good sense so that we can all vote for it, I will withdraw my amendment to let the gentleman from York offer his substitute.

Mr. COCHRAN. I move the following as a substitute for the entire section:

"No corporation shall issue stock or bonds except for money, labor or property actually received; and all stock dividends and fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations engaged in the business of common carriers or transporters shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law. Laws heretofore enacted by which an increase of stock or bonds or other indebtedness of any corporation has been authorized are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

I merely wish to say that the amendment which I have offered is intended to make the language of the section less verbose. It does not materially affect the provisions of the section. An expression in the original section provided that no increase of indebtedness in these cases should be made without the consent of a majority in value of the stockholders, which I think to be a very unfortunate form of expression. I have modified

that so as to read : "Without the consent of the persons holding the larger amount in value of the stock."

In all other respects, the amendment is the same in substance and effect with the printed section, except that it is made larger in applying not merely to railroad corporations and corporations doing the business of common carriers, but to all corporations, that no corporation shall issue stock or bonds, but the part with regard to the increase of capital is confined to railroad and canal companies only. "No corporation shall issue stock or any other indebtedness except for money or labor actually received ; and all stock dividends and other fictitious increase of capital stock invested in any corporation shall be void." That is general, but the second clause is confined to railroad corporations.

MR. BRODHEAD. I move to amend the amendment by striking out the words "stock dividends and." All my observation and all my experience in corporations has been that as a general thing stock dividends are generally the most honest that are made, but this amendment classes them with fictitious increases of the capital stock. I am perfectly willing that a section shall be inserted which shall declare void all fictitious increase of stock or indebtedness ; but stock dividends in ninety-nine cases out of a hundred are not fictitious. They are the result of earnings of the company which have been appropriated to improvements and extensions, and are, I am very free to say, the most honest dividends that are made. In the manner in which this section is framed it classes stock dividends with a fictitious increase of stock. Now, sir, when corporations have earned money and have put it into their improvements or into extensions, and the stock which is issued upon that is very frequently more genuine, more money goes in there, than any of the stock originally issued. The full intent and meaning of the committee will be attained by declaring that all fictitious increase of stock or indebtedness shall be void, striking out the words "stock dividends and," because, as I remarked before, the stock dividends nine times out of ten are the most genuine dividends made by any companies in this Commonwealth.

MR. BROOMALL. I have a suggestion to make which I hope will meet the approbation of the Convention. We are making no headway. We shall not get a railroad article that will suit the Rail-

road Committee and the people ; at least I am very much afraid of it. All of us desire to get this business on second reading and let the people see what it is ; and I propose that we let the opponents of railroads have their own way upon this article ; that we offer no amendments and no objections, but permit them to get it up exactly to suit themselves, and that we fall back upon our opportunity of requiring a separate vote upon any article by a vote of forty-five of our number. If, then, there should be more people in the State in favor of stage coaches and Conestoga wagons than of railroads, they can adopt the article. If, on the other hand, a majority of the people of the State are opposed to running the civilization of the age back a century or so, they need not vote down our whole Constitution in order to get rid of this very singular production. I think if we had adopted a rule when we first met, requiring the Railroad Committee to ride a week in stage coaches before they attempted to prepare an article, we should have had an article that probably the people of the State would adopt.

MR. BULLITT. Before the vote is taken on this section, I desire to say a word or two.

THE PRESIDING OFFICER, [Mr. Simpson in the chair.] The question now is on the amendment of the gentleman from Northampton (Mr. Brodhead.)

MR. BULLITT. I so understand, but I understand it is a substitute for the section.

THE PRESIDING OFFICER. No ; it is to strike out certain words in the proposed substitute.

MR. BULLITT. I will wait until that vote is taken.

THE PRESIDING OFFICER. The question is on the amendment of the gentleman from Northampton.

MR. BRODHEAD. On that I call for the yeas and nays.

MR. BOYD. That is a very important proposition, and I hope we shall have the yeas and nays upon it.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken, resulted as follows :

YEAS.

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Carter, Corbett, Corson, Cronmiller, Curry, Curtin, Dallas, De France,

Edwards, Elliott, Ewing, Green, Guthrie, Hall, Harvey, Heverin, Hunsicker, Kaine, Lamberton, Lilly, Mann, Mantor, Newlin, Niles, Patton, Purman, Read, John R., Reed, Andrew, Russell, Simpson, Smith, Henry W., Smith, Wm. H., Van Reed, Walker, White, David N., White, Harry, White, J. W. F. and Worrell—49.

NA YS.

Messrs. Achenbach, Alricks, Baily, (Perry,) Bannan, Barclay, Biddle, Calvin, Campbell, Cochran, Funck, Gilpin, Hay, Howard, Landis, MacConnell, M'Culloch, Patterson, D. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Rooke, Temple, Turrell and Wherry—24.

So the amendment to the amendment was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bownan, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Gibson, Hanna, Hazzard, Hemphill, Horton, Knight, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Smith, H. G., Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, John Price, Woodward, Wright and Meredith, *President*—60.

THE PRESIDING OFFICER. The question recurs on the substitute as amended.

Mr. BULLITT. Before the vote is taken on this section, I propose to call the attention of the Convention, and especially of the chairman of the Railroad Committee, to what appears to me to be rather remarkable language used in this section. I understand that the amendment offered substantially agrees with the section as we have it before us. Now, the first two lines of this section provide as follows:

"No railroad, canal, or transportation company shall issue any stock or bonds except for money, labor, or property actually received and applied to the purposes for which such corporation was created."

I believe the amendment is substantially the same.

SEVERAL DELEGATES. Oh, no; it has been changed.

Mr. BULLITT. I should like to hear the amendment read as it now stands.

THE PRESIDING OFFICER. It will be read for information.

THE CLERK read as follows:

"No corporation shall issue stock or bonds, except for money, labor, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations engaged in the business of common carriers or transporters shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days notice given in pursuance of law. Laws heretofore enacted by which an increase of stock or bonds or other evidences of indebtedness of any corporation has been authorized are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

Mr. BULLITT. The remarks which I intended to make were applicable particularly to the words "and applied," and therefore I have nothing to say now as they do not appear in the substitute.

Mr. ARMSTRONG. I desire to call the attention of the Convention to the fact as I believe it is under the construction of this section. It will read thus, leaving out all except that which applies to this point:

"No railroad company or transportation company shall issue any bonds except for money actually received."

Under this section they could not discount a bond. If they issued a bond for one hundred dollars and got ten cents less than one hundred dollars, it would be a violation of this Constitution. I say it is entirely wrong, in my judgment; and it cannot be carried out.

Then they are confined to six per cent. interest. How are railroads to get along? If they issue a bond for one hundred cents and only get ninety-nine they do not issue a bond for the money received; they issue it for more than the money received, and it is just as much a violation of this Constitution as though they only received one cent for a bond of \$100. It totally forbids discounts on bonds, and as it stands I certainly cannot vote for the section with that provision in it. That part of it which provides against fictitious stock and that the stock shall not be increased without the consent of the stockholders I approve of; but with this provision in it I do not see how I can vote for it. I will move to strike out—

The PRESIDING OFFICER. The Chair will suggest to the gentleman that if he calls for a division of the question terminating with the word "void," in the fifth line, he will accomplish his purpose.

Mr. ARMSTRONG. Well, sir, I was going to move an amendment but I suppose it would not be of any use, and I shall not do it.

Mr. EWING. I move to amend the amendment by striking out the words "engaged in the business of common carriers or transporters, so that that portion of the section will read: "The stock and indebtedness of corporations shall not be increased except in pursuance of a general law."

The effect of this amendment, if adopted, would be to make the provision applicable to all corporations. The amendment offered by the gentleman from York strikes out in the first part of the section the limitation to railroad, canal and transportation companies, and very properly I think; but when he comes to the second portion of it, which says that the stock of these corporations shall not be increased without the consent of the majority of the stockholders, he limits it to railroad and transportation companies. The section as offered is a kind of conglomerate. Now, if the provision requiring notice and requiring the consent of all the stockholders is a good one for railroad corporations. I cannot see why it is not a good one for all corporations. The evil intended to be corrected is one which prevails in other corporations, bridge companies, gas companies, and a great many others, just as much as it does in railroad corporations.

The PRESIDING OFFICER. The question is on the amendment of the delegate from Allegheny (Mr. Ewing) to the amendment.

The amendment to the amendment was agreed to.

Mr. BRODHEAD. I move to amend the amendment by striking out "sixty" and inserting "thirty." Thirty years ago sixty days notice would have been proper, but in these days of telegraphs and fast lines, a notice of thirty days is all that is necessary. I believe we have uniformly hertofore on all the other sections of the Constitution stricken out "sixty" and inserted "thirty," and I therefore move the same amendment here.

Mr. COCHRAN. I hope the limitation in point of time will not be reduced. There

ought to be an opportunity for the stockholders to have fair notice.

The amendment to the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the amendment offered as a new section as amended.

Mr. BRODHEAD. I call for the yeas and nays.

Mr. EDWARDS. I second the call.

Mr. BOYD. I should like to know what we are to vote about.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from York as amended.

Mr. BOYD. I should like to hear it read, because nobody understands what is going on here to-day.

The CLERK read as follows:

"No corporation shall issue stock or bonds except for money, labor or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days notice given in pursuance of law. Laws heretofore enacted, by which an increase of stock or bonds or other evidences of indebtedness of any corporation have been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

The PRESIDING OFFICER. The Clerk will proceed with the call.

Mr. HARRY WHITE. Mr. President: I wish to call for a division.

The PRESIDING OFFICER. The call will proceed.

Mr. BRODHEAD. I rise to a point of order. The yeas and nays have been ordered.

The PRESIDING OFFICER. The Clerk will proceed with the call of the roll. It is too late to call for a division. The amendment was read merely for information. The Clerk will proceed with the call of the roll on the amendment as amended.

Mr. HARRY WHITE. I should like to have a division of the section. ["Too late."]

The PRESIDING OFFICER. That cannot be done now. The call will proceed.

The question being taken by yeas and nays resulted as follows:

Y E A S .

Messrs. Achenbach, Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Black, J. S., Brown, Calvin, Campbell, Carter, Cochran, Dallas, De France, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Hay, Horton, Howard, Landis, M'Culloch, M'Murray, Mantor, Newlin, Patterson, D. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Rooke, Russell, Simpson, Smith, H. G., Smith, Wm. H., Turrell, White, David N., White, Harry and White, J. W. F.—40.

N A Y S .

Messrs. Armstrong, Bannan, Barclay, Bigler, Black, Chas. A., Brodhead, Broomall, Buckalew, Bullitt, Corbett, Corson, Cronmiller, Curry, Edwards, Elliott, Green, Harvey, Heverin, Hunsicker, Kaine, Knight, Lamberton, Lear, Lilly, MacConnell, Mann, Niles, Patton, Purman, Reed, Andrew, Smith, Henry W., Temple, Walker, Wetherill, J. M., Wherry and Worrell—36.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bardsley, Bartholomew, Beebe, Bowman, Boyd, Carey, Cassidy, Church, Clark, Collins, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Hazzard, Hemphill, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Van Reed, Wetherill, Jno. Price, Woodward, Wright and Meredith, *President*—57.

The PRESIDING OFFICER. The question recurs on the section as amended.

Mr. HARRY WHITE. I presume now we shall have the yeas and nays on the section as amended, and before the vote is taken I wish the first part of the division divided at the word "law," in the eleventh line, preceding the words, "Laws heretofore enacted."

The PRESIDING OFFICER. The question is on the substitute as amended.

Mr. HARRY WHITE. Let that be divided as I have suggested at the word "law." The second division then will commence with the words, "Laws heretofore enacted," &c.

Now, Mr. President, my reason for asking for this division is this: I have voted for the report of the Railroad Committee

in the main; I design to do so still; but it is not my desire to do impracticable or unwise things if I know it; but if I voted for this entire section it seems to me I should be doing an unwise and imprudent thing. I desire and design to vote for the first clause of this section as amended; I design to vote against the second clause, which is as follows, in the print, though somewhat different in words in the amendment now pending:

"All laws heretofore enacted by which an increase of the capital stock or of the bonds or other evidences of indebtedness of any railroad or canal company has been authorized are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

Mr. President, for many years the Legislature has authorized the increase of the capital stock to a certain amount of large railroad corporations of this Commonwealth. A few years ago the Pennsylvania railroad asked for the increase of her capital stock, in the Legislature of 1867. I believe the then Executive of the Commonwealth vetoed the bill. There was an effort made to pass it over his veto which succeeded in one House but failed in the other, and a compromise was made between the parties who opposed and those who favored—

Mr. BOYD. I rise to a point of order. My point of order is that it is not in order for the gentleman to discuss what the Pennsylvania railroad company has done in the Legislature and the history of the legislation upon that subject.

The PRESIDING OFFICER (Mr. Simpson.) The point of order is not well taken.

Mr. BOYD. I am sorry that I must appeal from the decision of the Chair.

The PRESIDING OFFICER. The question now before the Convention is a matter upon which it may be very proper for gentlemen to refer to legislative proceedings by way of illustration.

Mr. BOYD. I understand that there is a distinct proposition at issue here, and the gentleman's remarks are in relation to specific legislation with regard to a particular railroad company and the course of the Legislature upon that subject.

The PRESIDING OFFICER. The reason why such a clause should be in the Constitution or not in the Constitution is proper to be discussed, and arguments may be advanced and illustrations used.

Mr. BOYD. I appeal from the decision of the Chair. I say the ruling of the Chair is incorrect, and he should decide

that the gentleman is not in order in discussing—

Mr. DALLAS. I rise to a point of order. Debate is not in order pending an appeal.

The PRESIDING OFFICER. Debate is not in order. The Chair will state the question to the Convention.

Mr. HARRY WHITE. May I proceed?

The PRESIDING OFFICER. The gentleman from Indiana will pause until the gentleman from Montgomery submits his appeal in writing.

Mr. NILES. What is the question on which he has appealed?

The PRESIDING OFFICER. The gentleman from Montgomery raised a point of order; the Chair made his decision; and the gentleman from Montgomery has been directed to reduce his appeal to writing, when it will be submitted to the Convention by the Chair.

The appeal having been reduced to writing was submitted and read as follows:

"Mr. Boyd appeals from the decision of the Chair that the gentleman from Indiana (Mr. Harry White) is in order in stating what the Legislature did in 1867, in relation to the passage of an act by the Legislature authorizing the Pennsylvania railroad company to borrow money, and the course of the members of the Legislature in relation to the passage of said act, which is, in the opinion of the undersigned, not relevant."

The PRESIDING OFFICER. Is the appeal seconded?

Mr. HEVERIN. I second the appeal.

The PRESIDING OFFICER. The question is, shall the decision of the Chair stand as the judgment of the Convention?

Mr. BOYD. On that I call for the yeas and nays.

Mr. HEVERIN. I second the call.

Mr. MANN. Mr. President: I rise to a question of order. The appeal must be signed by two members in writing.

Mr. BOYD and Mr. HEVERIN thereupon signed the appeal.

Mr. HUNSICKER. Now, I move an adjournment.

SEVERAL MEMBERS. No, no; let us settle this matter.

Mr. HUNSICKER. Very well.

Mr. WHERRY. I ask that the question be distinctly stated before the yeas and nays are called.

The PRESIDING OFFICER. The Chair will state the question. The gentleman from Indiana was discussing the pending

proposition and referred to some action of a railroad company in the Legislature. The gentleman from Montgomery objected to his proceeding as not being in order. The Chair ruled that he was in order, from which decision an appeal has been taken. The question is, shall the decision of the Chair stand as the judgment of the Convention, upon which question the yeas and nays have been called for.

Mr. BOYD. Mr. President: In addition to what you have stated, you omitted to state that the gentleman was discussing, or making remarks in relation to, the conduct of members of the Legislature. ["Question." "Question."]

The PRESIDING OFFICER. The yeas and nays have been called for and the call seconded. The Clerk will call the names of members.

The CLERK proceeded to call the roll.

Mr. SIMPSON, [when his name was called.] I ask leave of the House to be excused from voting upon this question, so that it shall not appear upon the Journal that I was absent when the vote was taken.

Unanimous leave was given.

The result was announced, as follows:

YEAS.

Messrs. Achenbach, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Black, J. S., Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Cochran, Corbett, Cronmiller, Curry, Dallas, De France, Edwards, Elliott, Ewing, Fulton, Funck, Gilpin, Green, Guthrie, Hall, Harvey, Hay, Horton, Howard, Hunsicker, Kaine, Lamber-ton, Landis, Lilly, MacConnell, M'Clellan, M'Culloch, M'Murray, Mann, Mantor, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Russell, Smith, H. G., Smith, William H., Van Reed, Walker, Wetherill, J. M., Wherry, White, David N., White, Harry, and White, J. W. F.—67.

NAYS.

Messrs. Boyd, Heverin, Reynolds, and Smith, Henry W.—4.

So the decision of the Chair was sustained.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baker, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Curtin, Cuyler, Darling-

ton, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Hazzard, Hemp-hill, Knight, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Simpson, Stanton, Stewart, Struthers, Temple, Turrell, Wetherill, J. Price, Woodward, Worrell, Wright and Meredith, *President*—62.

THE PRESIDING OFFICER. The gentleman from Indiana will proceed.

Mr. HARRY WHITE. The act of 1867 increasing the stock of the Pennsylvania railroad company became a law. At the same session an act was passed increasing the stock of the Allegheny Valley railroad company, and as the result of that law large improvements have been projected and are now being made in the construction of a low grade railroad in a region of country which previously had not been traversed by rail. The Lehigh Valley railroad company also had extended to it the privilege of increasing its capital stock, all of which has not been used. The Reading railroad company also had conferred upon it an increase of its capital stock, and acts were passed authorizing an increase of the capital stock of the Pittsburg, Charlestown and Virginia railroad company, and the Connells-ville railroad company. These corporations were all legitimate corporations, enterprises engaged in good faith in the development of the resources of the Commonwealth, and they will all be directly affected by the operation of this section and affected injuriously to the interests of their stockholders. They have never complained of the passage of these acts. Since the General Assembly passed them there have been meetings of these corporations; there have been meetings of the boards of directors and meetings of the stockholders, and no successful complaint has ever been made against the acts of Assembly increasing their stock. Therefore I am opposed to the latter part of this section.

Mr. HOWARD. I desire to say a few words in reply to the gentleman from Indiana. I understand that he is opposed to the latter clause of this section.

Mr. HARRY WHITE. Only.

Mr. HOWARD. Yes, "only;" and, Mr. President, that clause was introduced by the unanimous vote, if I remember aright, of this Convention, which in-

structed the Railroad Committee to report such a provision.

Mr. MANN. It was not unanimous.

Mr. HOWARD. If it was not unanimous it was nearly so. The instruction was given by a full vote of this Convention after deliberation, and there is no doubt that this concluding clause is a very valuable part of the section. Some of the corporations of this Commonwealth have wrung from the Legislature the right to increase their capital stock to any extent that they please. There is no limit to the power of some of them in this respect. They have the power to borrow money without limit, with which to buy up and monopolize all the coal and mineral land in this Commonwealth, and there is no way of reaching this monstrous abuse except by a provision of this kind, that so far as they have issued stock, and so far as innocent purchasers have taken it, so far they shall be protected. It would be monstrous to leave this matter in the position in which it is at present. We know perfectly well that there are corporations in this Commonwealth which have the right to issue stock and bonds without any limit whatever. This provision is intended to apply to corporations of that description, and it certainly ought to be adopted by this Convention.

There are three divisions of this section, and each division is valuable, valuable for the people of the Commonwealth, for the business interests of the State, and for its *individual* enterprises. We all know perfectly well that one of the great and wealthy corporations of this Commonwealth has already obtained a charter whereby it has the right to buy up all the coal lands and all the mineral lands of the State. It is wrong in principle, and I have no doubt that the people of this Commonwealth, especially the people on the seaboard, will find it so to their cost. That great monopoly now talks about putting up the price of coal, and it will do it. It will wring the necks of the people of the city of Philadelphia, and its manufacturers, before it gets done with them. It has laid its giant hand upon the coal interests of Pennsylvania, east of the mountains, to such an extent that it is bound to control them. It has the power to issue stock and bonds to an unlimited amount to enable it to do so, and if it is necessary that power will be backed by English capitalists to the amount of \$100,000,000 or more if necessary.

Is not the necessity for the adoption of this clause, that the delegate from Indiana is so anxious to strike out, apparent? He says that it will affect several railroad companies which have already received such unlimited power at the hands of the Legislature. Suppose these companies are arrested by this section in further issues of stock. It is easy to apply to the Legislature, and in a proper case they can have conferred upon them the right to increase their capital stock to any proper amount. But hereafter it should be known that stock will not be allowed to be increased without limit. We should know that the stock is to be used for a legitimate and a valuable purpose, that it is to build railways, that the issue of stock is necessary to build them, and that it is not the intention to water the stock or increase it unnecessarily. After this stock is increased it must be made to earn dividends. It must make its proper interest, and the people of the Commonwealth must be taxed in the price of transportation for the purpose of raising money to pay dividends on that stock, and therefore it is the right of the people to know that those issues of stock are necessary and that the proceeds are to be used for legitimate and proper improvements.

That is all this section contemplates. It is good in all its parts. It was considered by the Committee on Railroads and Canals long and laboriously, and I desire to say that while we did not happen to have upon that committee the president of any railroad, nor any of the very distinguished railroad lawyers of this Convention, we had the proper and the necessary information at our command to direct us in our work. I see that one of the Philadelphia papers, in reporting the proceedings of this Convention upon the consideration of this railroad article, states that the gentleman from Philadelphia (Mr. Cuyler) made the tremendous point against the Railroad Committee that it did not have upon it or before it a railroad officer to enlighten it. That Railroad Committee labored faithfully and honestly and they had all the knowledge which it was possible to obtain by honest industry. I talked with railroad men in order to ascertain their views, and all the idea that I could obtain from them was that they would like to cut each others' throats. [Laughter.]

Suppose we had called before the Committee on Railroads and Canals from the Pennsylvania railroad company Thomas

A. Scott, and then gone to Baltimore and called Mr. Garrett of the Baltimore and Ohio railroad company, then gone to New York and called upon Mr. Gould and Vanderbilt; do you suppose that they would have ever, upon the face of this earth, been able to agree as to what would be a proper provision to be put into the Constitution? No, sir; it would be simply a game of sharpers to see which could get ahead of the others, and we would have never been able to get a sensible and logical idea from any one, or all of them, as to what would be best for the interests of the country. The Railroad Committee had the benefit of the information of as good men as there are in the Commonwealth and far better than the newspapers of Philadelphia. I understand perfectly well that the people of the Commonwealth have got the idea into their heads that the delegates from Philadelphia are entirely running this Convention, because no matter what any other delegate may say, the Philadelphia papers only give half of his name, while everything, or the substance thereof, that is said by the delegates from Philadelphia gets into the papers, and anyone reading the newspapers of this city would naturally suppose that all the rest of the Convention sat here listening and voting in silence. That is what we got for coming to Philadelphia. Part of the contract was that if we came to this city the great city of Philadelphia had plenty of newspapers that would publish our proceedings so that the people of the Commonwealth would understand what we were doing.

The section is a good one. It is good in all its parts, and the last part is the best, and it is of the very utmost importance that this Convention shall place this part of that section in the Constitution. If this Convention desires to protect the citizens of the Commonwealth against some, at least, of the giant monopolies that have been created by the Legislature, either unguardedly or by some stupendous corruption, let them vote this section in entire; do not strike out its most important and vital part.

The PRESIDING OFFICER. The question is on the first division of the section as amended.

Mr. CORBETT. I think that the latter part of the section is very important.

Mr. ANDREW REED. The latter clause is not before the Convention.

Mr. CORBETT. Has a division been called?

The PRESIDING OFFICER. Yes, sir; the first division is to end with the word "law."

Mr. CORBETT. Then, as it is only the latter part of the clause to which I wish to allude, I believe I had better wait till that comes up.

Mr. BIDDLE. I should like to hear the first division of the section read.

The CLERK read as follows:

"No corporation shall issue stock or bonds except for money, labor, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding a larger amount in value of the stock first obtained at a meeting to be held after sixty days notice given in pursuance of law."

Mr. EDWARDS. On that question I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The PRESIDING OFFICER. The yeas and nays are called for upon the question of agreeing to the first division of the section, and the Clerk will proceed with the call.

The yeas and nays being taken, resulted as follows:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Black, J. S., Brown, Buckalew, Calvin, Campbell, Carter, Cochran, Cronmiller, Curtin, Dallas, De France, Ewing, Fulton, Funck, Gilpin, Guthrie, Harvey, Hay, Horton, Howard, Landis, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reynolds, Rooke, Russell, Simpson, Smith, H. G., Smith, Wm. H., Turrell, Van Reed, Wetherill, J. M., White, David N. and White, Harry.—50.

NAYS.

Messrs. Barclay, Boyd, Brodhead, Bullitt, Corbett, Corson, Curry, Edwards, Elliott, Green, Hunsicker, Kaine, Knight, Lamberton, Lear, Lilly, Niles, Patton, Reed, Andrew, Smith, Henry W., Walker, and Worrell.—22.

So the first division of the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew,

Beebe, Bigler, Black, Charles A., Bowman, Broomall, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hall, Hanna, Hazzard, Hemphill, Heverin, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Temple, Wetherill, John Price, Wherry, White, J. W. F., Woodward, Wright and Meredith, *President*—61.

The PRESIDING OFFICER. The question now is on the second branch of the section.

Mr. COCHRAN. Mr. President—

The PRESIDING OFFICER. If the gentleman rises to discuss the question it is too late. The question is on the second division.

Mr. COCHRAN. I call for the yeas and nays.

Mr. LILLY. I second the call.

SEVERAL DELEGATES. Let the division be read.

The CLERK read as follows:

"Laws heretofore enacted by which an increase of stock or bonds or other evidences of indebtedness of any corporation has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

The question was taken by yeas and nays, with the following result:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Campbell, Cochran, Ewing, Funck, Gilpin, Guthrie, Hall, Hay, Horton, Howard, M'Culloch, M'Murray and Patterson, T. H. B.—16.

NAYS.

Messrs. Achenbach, Armstrong, Baily, (Huntingdon,) Bannan, Barclay, Biddle, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Carter, Corbett, Corson, Cronmiller, Curry, Curtin, De France, Edwards, Elliott, Fulton, Green, Hunsicker, Kaine, Knight, Lamberton, Landis, Lear, Lilly, MacConnell, Mann, Mantor, Niles, Patterson, D. W., Patton, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Runk, Russell, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, Van Reed, Walker, Wetherill, J. M., White, David N. and Worrell.—54.

So the second division of the section was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Bowman, Broomall, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Harvey, Hazzard, Hemphill, Heverin, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W. Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Ross, Sharpe, Stanton, Stewart, Struthers, Temple, Wetherill, John Price, Wherry White, Harry, White, J. W. F. Woodward, Wright and Meredith, *President*—63.

The CLERK read the next section as follows:

SECTION 10. All municipal, railroad, canal and other corporations, and individuals, shall be liable for the payment of damages to property resulting from the construction and enlargement of their works, as well 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. BRODHEAD. Mr. President: This subject was fully discussed while we were on the second reading of the article on corporations, and we adopted the section, which I will take the liberty of reading:

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 against corporations made by viewers or otherwise. The amount of such damages in all cases of appeal shall on the demand of either party be determined by a jury.

This is on exactly the same point, and it fully covers all that is endeavored to be met here.

MR. KAINE. I move to amend the section in the fifth line by striking out the words "to be paid." They are unnecessary. It will then read: "And said damages shall be paid or secured before the injury is done." "Secured" is sufficient.

MR. COCHRAN. I hope that amendment will not be adopted. We have used the ordinary legal language in this case.

MR. FUNCK. I offer the following as a substitute for the section—

The PRESIDING OFFICER. It is not now in order and will not be until after the vote is taken on the pending amendment to strike out three words in the section. The question is on the amendment of the gentleman from Fayette (Mr. Kaine.)

The amendment was rejected.

MR. FUNCK. I move to amend by striking out all after the word "section" and inserting the following:

"No corporate or municipal body or individual shall take private property for public use or injuriously affect it by change of character of highway or otherwise, without being required to make compensation to the owner thereof for all damages, direct or consequential, resulting from such taking or injury, and such compensation shall be paid or secured before such property shall be taken or injured."

Mr. President, I have offered this substitute for the section because the section as adopted by the committee of the whole is too narrow and does not embrace several items of injury for which compensation should be made. A careful reading of the section as adopted will disclose the fact that it provides only for the payment of actual or direct damages. It makes no provision whatever for the payment of proximate consequential damage. For instance, if a railroad company in the construction of its railroad takes possession of the land of an individual and by means of a cut or the throwing up of a high embankment injures the property of an adjoining proprietor, that adjoining proprietor can recover no damages for the injury done him, no matter what the extent of the injury may be.

The damages provided for by the section are of this character: Suppose in the digging of a cut on the land of a proprietor, a house standing on the land of an adjoining proprietor should be injured by the caving in of its foundation. That is a case of direct injury and will be covered by the original section. Again, suppose in blasting rocks in making an excavation the house of the adjoining proprietor should be shivered. In that case damages could be recovered under the original section; but all other damages of a consequential character are not embraced in it.

Then, again, suppose a public highway has been laid out under the right of eminent domain—a public roadway for horses and teams to travel over. That may not be injurious to the property of the owners along the track; it may, on the contrary, be beneficial to them; but subsequently a railroad corporation acquires the right to construct a railroad over this public highway, and in doing it throws up an embankment or cuts a ditch by which the houses on both sides may be materially injured, there can be no recovery of damages under the original section. Nor does the original section apply at all to the case of a municipal corporation, for I should like to know what municipal corporation in anything that it may do properly comes within this section, unless it travels outside of what is usually done by municipal corporations—such as the construction of water works or the like “construction and enlargements of their work,” being the only term that applies to municipal corporations. Now, in the opening of streets, in the regulation of grades, in the construction of sewers and otherwise, the property of a citizen of the municipality may be very seriously injured, and yet the original section makes no provision for compensation. I submit to this Convention that whenever the property of an individual is injured by the exercise of the right of eminent domain, whether that injury be direct or consequential, the person should be compensated to the extent of his injury.

It may be said that if a railroad or any other public improvement is constructed over the land of A and the land of B is entirely untouched, the land of B is not injured, and consequently he should have no right to recover damages. In answer to that, I say that if, by the construction of this public highway, the land of B has been depreciated in value so that if it were put up at sale it would bring a thousand dollars less than it brought before the improvement was made, it is an injury to him to that extent, for which he should be compensated; it is just as clearly and manifestly a loss to him as if that much money had been taken out of his pocket. What difference can it make to him whether a portion of his property is appropriated to the construction of this public highway or whether his property is consequentially injured by reason of the work which has been done by the corporation? In either case, he has lost just as much as his property will bring

less if put up at public sale, and whatever that may be is the extent of the injury for which he should be compensated.

It has been said heretofore that if a railroad corporation or any other corporation shall be called upon to pay injuries of this kind no public improvement can be made. I answer that in this way: If people are to be injured to this extent in order to allow these public improvements to be made, it is levying a sort of compulsory contribution upon them to the extent to which their property has been injured to make the improvements. That certainly is unjust. But, as I said before, whether that property is injured or whether it is taken can make no difference to them. Whatever the amount that it will bring less if sold at public sale, to that extent they have suffered; and all these injuries should be paid for, because public highways, although of great public utility, are not built by the stockholders for the purpose of benefiting the public or developing the resources of the Commonwealth, but mainly with the intention of making money for those who have invested their capital in the enterprise. That a great benefit results to the public is incidental to the improvement, and assimilates itself to the case of an individual who resides in a town and expends \$20,000 or \$30,000 in erecting a magnificent mansion for himself. All the property around him is enhanced in value on that account, and yet he would never think of going to his neighbors and levying an assessment on them to assist him in paying for his building. They are consequentially benefited. He never contemplated that, but it is one of the incidents of the improvement which he made. Precisely so with these corporations. No; whenever any such improvements are made any citizen of the Commonwealth injured thereby, whatever the extent of the injury may be, should be paid; they are not made at his instance, but frequently against his will under the authority of the government. And in many instances the injury falls upon individuals who are little able to bear it.

THE PRESIDING OFFICER. The question is on the amendment of the gentleman from Lebanon.

MR. TURRELL. I wish to detain the Convention a moment to call to mind the fact that this section was very thoroughly considered on a former occasion and we had a great deal of declamation and argument upon it; and especially after a very

luminous speech by the President of the Convention, Mr. Meredith, the language seemed to be adapted to express the idea that the Convention wanted to put into the section; and I do not believe that at this time we shall benefit by changing it. I hope it will be adopted just as it came from the hands of the committee of the whole.

Mr. EWING. Mr. President: This is a very important section if we adopt it either as it stands or as the amendment proposes to make it. It is one that I do not think can be considered properly to-night, one that proposes a radical change in several respects, and in order that the amendment may be seen and examined, I move that the Convention do now adjourn.

The question was put, and the motion was declared not to be agreed to.

Mr. LAMBERTON and Mr. WORRELL called for the yeas and nays, and they were taken.

Mr. ALRICKS. I rise to a point of order. This House is in session after six o'clock.

The PRESIDING OFFICER. Nothing can interrupt the roll call. The result must be announced to the Convention.

The result was then announced as follows:

Y E A S .

Messrs. Alricks, Armstrong, Baer, Bailly, (Perry,) Biddle, Black, J. S., Buckalew, Cochran, Elliott, Ewing, Fulton, Funk, Hay, Kaine, Knight, Lamberton, Lear, Lilly, Niles, Patterson, T. H. B., Purviance, Samuel A., Smith, H. G.,

Smith, Henry W., Walker and White, Harry—25.

N A Y S .

Messrs. Achenbach, Bailey, (Huntingdon,) Bannan, Brodhead, Bullitt, Calvin, Campbell, Corbett, Corson, Cronmiller, Dallas, De France, Edwards, Gilpin, Green, Guthrie, Hall, Horton, Howard, Landis, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Patterson, D. W., Patton, Reed, Andrew, Reynolds, Rooke, Russell, Simpson, Smith, Wm. H., Turrell, Van Reed, Wetherill, J. M., White, David N. and Worrell—38.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Brown, Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Curry, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'CLean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purman, Purviance, John N., Read, John R., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Temple, Wetherill, John Price, Wherry, White, J. W. F., Woodward, Wright and Meredith, *President*—70.

The PRESIDING OFFICER. The motion to adjourn is not agreed to. The hour of six o'clock having arrived, however, the Convention stands adjourned until tomorrow morning at nine o'clock.

ONE HUNDRED AND FORTY-FIRST DAY.

TUESDAY, July 15, 1873.

Y E A S.

The Convention met at nine 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.

LEAVES OF ABSENCE.

Mr. KAINE asked and obtained leave of absence for Mr. Hanna for a few days from to-day.

Mr. BRODHEAD asked and obtained leave of absence for himself for a few days from to-day.

Mr. BOYD asked and obtained leave of absence for himself for the residue of this week.

Mr. LAWRENCE asked and obtained leave of absence for Mr. J. N. Purviance for a few days from to-day on account of sickness.

SUBMISSION OF CONSTITUTION.

Mr. BUCKALEW. I move to take up the resolution which I offered a few days ago in relation to an adjournment and the submission of the Constitution.

Mr. TEMPLE. On that motion I call for the yeas and nays.

Mr. SIMPSON. I second the call.

Mr. D. N. WHITE. I understood a few days ago that that resolution came up and was rejected.

Mr. SIMPSON. I rise to a point of order. Is debate in order?

The PRESIDENT *pro tem.* It is not after the yeas and nays have been ordered.

Mr. D. N. WHITE. I just wish to say that I offered a resolution the other day very similar to this, and I hope this resolution will be voted down for the purpose of taking up the other.

Mr. H. W. SMITH. Debate is in order.

The PRESIDENT *pro tem.* The Clerk will call the roll of members on the motion of the gentleman from Columbia to proceed to the consideration of the resolution offered by him.

The yeas and nays were taken with the following result:

Messrs. Ainey, Alricks, Baer, Bannan, Black, J. S., Brodhead, Broomall, Brown, Buckalew, Calvin, Cronmiller, Curry, Curtin, Elliott, Ewing, Green, Hall, Hanna, Harvey, Hemphill, Kaine, Knight, Lamberton, Littleton, MacConnell, M'Murray, Mantor, Newlin, Palmer, G. W., Patton, Porter, Pughe, Read, John R., Reynolds, Rooke, Ross, Smith, H. G., Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., White, J. W. F. and Worrell—45.

N A Y S.

Messrs. Achenbach, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Boyd, Campbell, Carter, Clark, Cochran, Corbett, Dallas, De France, Edwards, Fulton, Funck, Gilpin, Guthrie, Hay, Horton, Howard, Lawrence, Lear, Lilly, Long, M'CLean, M'Culloch, Mann, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Russell, Simpson, Smith Wm. H., Temple, Wetherill, Jno. Price, White, David N. and White, Harry—41.

So the resolution was ordered to be read a second time.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Bullitt, Carey, Cassidy, Church, Collins, Corson, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazzard, Heverin, Hunsicker, Landis, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Purviance, John N., Runk, Sharpe, Stanton, Stewart, Wherry, Woodward, Wright and Meredith, *President*.—47.

The PRESIDENT *pro tem.* The resolution is before the Convention and will be read.

The resolution was read the second time, as follows:

Be it resolved as follows:

First, That when the article on railroads shall have passed second reading the Convention will adjourn to meet

again on the 15th of day of September, at ten o'clock A. M.

Second, That articles passed on second reading, including the legislative article, be re-printed as amended, and that three thousand copies thereof, in pamphlet form, be published for general distribution.

Third, That the Convention will submit the new or revised Constitution proposed by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next.

Mr. S. A. PURVIANCE. I move to amend, by inserting after the words, "article on railroads," the words, "and the article on the Legislature."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny.

Mr. BIGLER. Mr. President: I desire to say a very few words on this subject generally. Like yourself, sir, I have stood out against this idea of a recess; but on looking for public reasons why we should struggle through this business in the hot weather, I have become satisfied that we may very wisely take a recess.

It seemed desirable to the Convention, as I am sure it did to right-minded men all over the State, that the proposed reforms should apply to the coming elections. I believe that has been decided to be impracticable; the coming election must be held under the old forms.

Then I see only one remaining public reason for attempting to get through without a recess; that is, that the reforms in legislation may operate upon the coming Legislature. I believe it is the understanding of those who favor the recess that that purpose shall be accomplished. It is to be understood that we are to assemble here in September and prosecute this work with that diligence which will secure its completion and submission some time in November, so that it may go into operation about the first of January next, so that the restrictions on legislation may operate upon the coming Legislature.

With that view I can see no public reason for holding out in the condition in which we are now. Indeed, sir, I think I can see reasons why a little more deliberation and better opportunities on these grave questions may prove useful to the people of the State. I confess that I am somewhat despondent and discouraged

about the work of the Convention for the last week or so. For one, I am willing to say that I would be better prepared to enter upon these questions after some rest and relaxation.

Why, sir, to those of us who are somewhat advanced in years this is rather a serious business. I found it absolutely necessary to leave the city for the purposes of health and comfort and go out to Chestnut Hill, a distance of ten miles. To get here, it is necessary for me to be ready for breakfast before seven o'clock, and take the train and come here in time for the sessions of the Convention. Then we sit until one o'clock. Then we go out in the midst of the heat, in the hottest hours of the day, to get a lunch, after which we sit until six o'clock. I must then take the train and between seven and eight o'clock get a meal called a dinner and a supper mixed up. Now, sir, ten days of that kind of labor has somewhat exhausted me, and I feel, for one at least, that I should be better able to perform my duties after some relaxation. This is only a private reason. Those of a public character I have given heretofore. I confess that I have come to this ground with great reluctance, for I had a great anxiety to meet the public expectation that the Convention would accomplish its work within this month.

Mr. MANN. I hope the amendment of the gentleman from Allegheny will prevail. I am sure the people will be sufficiently disappointed if this Convention adjourns without completing its work, without giving them the additional cause of disappointment of not completing upon second reading one of the most important articles of the entire Constitution. There will be very great disappointment if the Convention adjourns without passing to second reading the article upon the Legislature. All over the State the people have been asking for months, "What are you going to do in relation to the number of members and the manner of their distribution throughout the State?" Now it is proposed to adjourn without answering that question. I think it would be a very unfortunate movement. Now, here we are just prepared to enter upon that question. I have no doubt the mind of every delegate is made up upon it, and all that is needed is that we come to a vote. We are as ready to vote upon it to-day as we ever shall be. What earthly reason therefore can be given for attempting to adjourn this body without answering the

just expectations of the people on that question?

We have been told on various occasions that it was necessary to adjourn this body for some particular reason. I ask any gentleman here to say that he believes any single adjournment of this body has heretofore worked any good. In my judgment, the time wasted in efforts to adjourn this body would have completed our entire work before this time if it had been devoted to legitimate work rather than to these attempts to adjourn; and now this motion is sprung upon us right in the midst of the consideration of the article on railroads. We stop work upon that when our minds are all prepared to finish it, and talk about adjournment again.

It was said last November that it was necessary to adjourn in order that the committees might prepare work for the Convention. I assert that there was not a single preparation made during our adjournment, and that we came together in January precisely as we separated in November. If we adjourn now we shall come back at the end of the recess not as well prepared to finish our work as we are to-day. That will be the result. We shall spend weeks before we can get back to that condition in which we are now. Our minds are made up. We have thought over these subjects and we are ready to vote to-day intelligently, and complete our work.

But, sir, I foresee that an adjournment is a foregone conclusion. All that I ask then, all that I beg for, is that the amendment of the gentleman from Allegheny shall be adopted, so that we shall send out to the people a completed work, so far as the second reading is concerned. We can complete this work this week if we will stop talking and wasting time in reference to adjourning, and go to work. I therefore hope that the amendment will prevail.

Mr. W. H. SMITH. Mr. President: This Convention met at Harrisburg in November last, and since then much of our time has been frittered and trifled away. As for myself, I am opposed to adjournment until this business is finished. I believe it can be done in three weeks and I think it ought to be done. These adjournments bear very hard upon those of us from the west who have subordinated our business to our duties here. One-sixth of our time was voted away for adjournments on Saturdays. Then we have had numerous other adjournments

for trivial reasons; we have had the yeas and nays constantly called upon the most unimportant questions. All these things have consumed the time, and now it is proposed that we shall adjourn again. We can finish in three weeks. If we adjourn now and come back again it will take us three months to get through. It is very hard, very unjust to us who come here from a long distance and are compelled to stay here over Saturdays and short adjournments. Other gentlemen who live within a hundred miles of this city can go home on Saturdays and attend to business and keep up the chain of what they have to do. It is not so with those of us who come from the extreme west, or even come two hundred miles to attend to their duties here. These adjournments are very hard and very unjust upon us. I trust that this resolution will be voted down finally, but if not I hope we shall certainly finish the legislative article before we adjourn.

Mr. SIMPSON. I trust the amendment will be adopted and that the Convention will not vote for any recess at least until we have finished the whole of our work on second reading. I am opposed to all recesses and shall vote against the proposition, although I shall vote for the amendment. I think we ought to sit here and finish this work. It is my conviction that if we take a recess now and come back again next fall, we shall be three months in session where we can finish now in this present month of July. I can work in hot weather, and I suppose I am quite as susceptible as most of the delegates on this floor. To my mind a recess is an indefinite extension of the sessions of the Convention. Now, if the ideas of some delegates on this floor are to control our action, that there must three months elapse between the time of our promulgating the Constitution and before a vote can be taken upon it, and we take a recess, we cannot submit the Constitution and put it in force on the first of January next. It will take from two to three months to get through with it here, and there will not be time to give sixty or ninety days notice and have it voted upon by the people this year, and it will carry it into next year before the Constitution can be put in force. But if you go on with it now you can submit it to a vote and put it in force prior to the assembling of the Legislature on the first of January next. We can make this organic law begin on the first day of January; but if we now take a re-

cess, the result in my opinion will be that we shall not be able to complete our work until after that time; this will of course postpone the time of its taking effect until long after the first of the year.

Mr. AINEY. I simply rise to object to any attempt to make the Convention vote on this question under false impressions. When I submitted a few remarks to the Convention two weeks ago, it was said by the same gentlemen who opposed a recess now that we could finish this work in two weeks. That was the assertion that was made here by these gentlemen. Now we are told we can finish our work in *three* weeks if we go on with it. We have spent the two weeks in diligent work, and what progress have we made? We have made reasonable progress, but it does not warrant the belief—from what has been done in these last two weeks—that we can finish this work in three weeks, or in less time than was then predicted by those who favored a recess. It was then said it would take at least two months to finish up this work in any manner that will be acceptable to ourselves or to the people. I earnestly hope the Convention will decide the question understandingly and not under the belief that by remaining here we will be able to finish in three weeks. I, for one, do not believe it possible or at all practicable. I do not believe the people expect or desire us to continue this work during the heated term. On the contrary, several newspapers throughout the State have expressed the opinion that the Convention ought to adjourn over the hot weather. I hold one in my hand, published in Allentown, which has a long and sensible article on the subject, taking the position that if this Convention continues its sessions, in the nature of things our work will run great risk of being spoiled by hasty and inconsiderate action. Every lawyer knows—and we have upwards of a hundred in this Convention—that he cannot try a cause as well in hot weather as he can in cold; he knows he cannot do the same justice to it then. While every lawyer knows this, the people know it also.

Mr. CARTER. Permit me to ask the gentleman a question?

Mr. AINEY. Certainly.

Mr. CARTER. I ask whether he is responsible for that article himself?

Mr. AINEY. In no possible form. I never saw, heard or knew of it until I ad it in the newspaper. I never spoke

to the editor on the subject, to suggest, solicit or request its publication in any shape or form; but it is a very good article, very well written, and the best part of it is that it contains reasons why this Convention should adjourn that cannot be successfully answered or controverted, in my judgment.

Mr. LILLY. I believe this work could have been finished in two weeks from the time the gentleman speaks of. If gentlemen had staid here and attended to their business, if they had staid here from nine o'clock in the morning until six o'clock in the afternoon, if we had settled down to do our work as we ought to have done, it ought to have been through. Instead of taking six weeks, the whole matter can be put through in one week or less, if the Convention will make up their minds to do it; but if they will come here in the morning from ten to half-past ten, and stay until twelve, and then go away and come back at three, and then go away again at four, and go home two or three times a week, I should like to know how any work could be done in that kind of way. I dare say, if we all come here and put our minds to work, as we could do, it might have been done long ago. Now, I want to say that I have been in favor all the time—

Mr. AINEY. I rise to a point of order. Is it in order for the schoolmaster of this Convention to read a lecture to the Convention this morning? [Laughter.]

Mr. LILLY. The gentleman has not been here long enough to become a scholar even in this Convention. [Laughter.] Consequently I cannot give him a lecture on that subject. He is not here long enough. Now, sir, I have been opposed to this adjournment. I want to get through here and go home. I have enlisted for the service.

Mr. HAY. "For three years or the war."

Mr. LILLY. I have enlisted for the war until we complete this Constitution. I have tried to attend to it and mean to attend to it until we get done, and I have opposed adjournments or recesses because I think we can do more now than we can do hereafter if we will only settle down and do it; but such work as we have done for two or three days past when gentlemen say all the time we are going to adjourn, and they do not sit right down to business as they ought to do, will not have been well done. Some gentlemen may vote one way and want

the other way. Now, I say here in my place that I have never felt any other way than that this Convention should stay here until we get through.

Mr. AINEY. I desire to ask the gentleman a question with his permission.

Mr. LILLY. I am not on the witness stand, especially to answer any questions of the gentleman from Lehigh.

Mr. AINEY. I want to ask the gentleman from Carbon if he does not ask the Convention to adjourn whenever he wants to go home.

The PRESIDENT *pro tem*. The delegate cannot be interrupted.

Mr. LILLY. If I was like the gentleman I would ask for an adjournment every other hour in the day almost, because he always wants to go home during the intervening hours. But, sir, I do not wish to talk about my attendance here. I arrange my business in such a way that I can stay here. Some other gentlemen cannot do it. I do not blame them for going home to attend to their business, but I do not think it is in their mouths to come here and talk about this Convention and what they have done. Let them go home and stay if they want to. But, sir, what I want to say is that I am desirous to see the work done and done well, and then let us go about our business. I shall vote against all adjournments.

Mr. EWING. Mr. President: I have not as yet made any speech whatever on questions of adjournment. I have steadily voted against any long adjournment, and been very anxious to finish up this business entirely and go home and stay and submit the Constitution to a popular vote, but I have changed my mind and am satisfied we cannot do so, and I believe we are at this time doing no good here. A large portion of the Convention has become utterly demoralized, and I am satisfied we are not giving proper consideration to our work. Even the delegate from Carbon (Mr. Lilly) within the past week has failed to speak on three or four different motions that were up, which never happened before. [Laughter.] My friend from Potter (Mr. Mann) seems to be demoralized. He has not taken up more than half the time that he did formerly. [Laughter.]

I believe that instead of gaining time, every day we sit here we are adding about two days to the time we shall take when we meet again in September or October, and I am ready to adjourn to-day. I do not believe we shall

do any good by going on with the article on the Legislature, and I shall vote for the adjournment at any time.

Mr. BAER. Mr. President: Having the right to speak ten minutes, I will waive the ten minutes if the Convention will take a vote. ["Yes."] So I will make the effort by moving the previous question.

Mr. H. W. SMITH. I second the call.

Mr. BAER. If the vote can be taken, I will withdraw it; if not I will take my ten minutes.

Mr. BUCKALEW. The gentleman prevents me from making an explanation by the call for the previous question.

The PRESIDENT *pro tem*. The delegate from Somerset has the floor.

SEVERAL DELEGATES. But he yields for a vote.

The PRESIDENT *pro tem*. Then the Chair recognizes the gentleman from Columbia.

Mr. BUCKALEW. Mr. President: I desire to state the grounds upon which this resolution can fairly stand for the justification of those who vote for it.

Now, sir, we are opposed to running our amendments through with the idea of having them submitted to a vote at the October election. There can be no other sufficient motive for sitting here at this season of the year and performing our work as we are performing it, very hastily, than a desire to submit our work at the October election, along with the political issues of the year. I am for taking a recess and concluding our work at a favorable season of the year when we can do it well, and submitting it to a vote at a special election to be held in the month of November or December, and to secure the action of the people upon our amendments so that they shall take effect upon the next session of the Legislature.

Our former resolution of adjournment fixed too late a date, and public opinion was against it for that reason. It fixed the twenty-first day of October, and there was reason to apprehend that if we adjourned to so late a day as that, there would not be sufficient time to conclude our work and have it voted upon by the people, so that it would take effect on the next Legislature. I have selected the middle of September in my resolution, and that is a compromise date. It will accommodate perhaps as many gentlemen as any other which we can select. Some prefer the first of October or some other early day in that month and some

the first of September. I have selected the middle of that month, which will be at the close of the hot season; and if we meet at that time there will be no difficulty in concluding our work and giving a month and a half's notice if you please, and having a vote on that work in time to have it take effect before the Legislature shall meet in January.

Mr. President, the Convention of 1838 adjourned from the 14th day of July to the 17th of October. We have here a precedent by a body similarly constituted with ourselves and assigned to similar duties.

My resolution is that when we conclude the railroad article, which will probably take us a day or two longer, we shall adjourn until ten o'clock upon the 15th day of September next. The gentleman from Allegheny (Mr. S. A. Purviance) proposes to amend by saying that we shall go on and take up the subject of the organization of the Legislature. I am opposed to that on several grounds. I am opposed to it because the chairman of that committee is absent, as well as a large number of the leading members of the Convention whose judgment and aid we require in passing upon that article. I am opposed to it because confessedly this Convention is not now in a condition to act upon that important subject. I am opposed to it because when we meet in September under circumstances very different from those which now exist, we can give to that important subject such consideration as it deserves.

Now, one of the gentlemen who has spoken has said that we have not determined anything about the Legislature, and the people desire to know what we intend to do regarding it. That is not so. The most important question, to wit, the number of members of the two Houses of the Legislature, has been substantially decided upon. The section with regard to the constitution of the Senate has passed second reading fixing the number at fifty, and virtually fixing the number of the House also at one hundred and fifty; and there is nothing remaining except to pass upon the question of the manner in which apportionments shall be made of members of the House of Representatives. That is the only subject remaining. Members will observe that by my resolution I provide that this article on the Legislature shall be printed along with the other articles, of course so far as it has passed second reading. The nine-

teenth section will be printed along with the rest, and also the pending thereto amendment of the gentleman from Philadelphia, (Mr. J. Price Wetherill,) regarding the composition of the House, may be printed at the end, and the whole people as well as the members of the Convention during the recess will have before them our work as it now stands, and form their opinions upon it preparatory to our reassembling here.

Mr. BIDDLE. I am opposed to any adjournment, and I will state my reasons. I do not believe that we are doing our work more hastily and more crudely than at any other period of our session; certainly not more hastily, because if any fault be urged against us, it is the delaying too long by too much discussion, especially on the articles which we have had under consideration latterly. The article relating to Legislature has been over-discussed; the article relating to the judiciary has received a very large share of discussion; and the present article, so far from being passed over hastily, is consuming a great deal of time.

Whether the work be done duly or not is not for me or any other delegate to say. Whatever is done by a majority of this Convention we are bound to submit to. That we may have made some mistakes in introducing too much matter into the Constitution I, for one, do not deny; but by going away and returning, members will return surcharged with new ideas and with new speeches to express those ideas, and it is not likely that we shall save time or bring a great deal more enlightenment to the work.

In regard to the supposed slim attendance of the Convention at this time, I beg to say that this morning I casually picked up, when I heard that subject broached, the Journal of this Convention, and by turning it over in a few places I find that on the twenty-first of January, the first place where the yeas and nays were called, there were only one or two more members present than are present to-day. In the first place where we find them called, the yeas were forty and the nays fifty, making ninety; and again we find fourteen and twenty-four, which make eighty-eight; and turning to the first of February, when the yeas and nays were called again, I find fifty-one and twenty-one, in all seventy-two, whereas to-day, if I recollect aright—and I wish to be corrected if I am wrong—we had forty-one and forty-five, making eighty-six. We have

therefore, a full average quorum in attendance, and by going on continuously, when the mind is warmed up and alive to the work, in my judgment we shall do a great deal better, as well as proceed a great deal more rapidly.

What remains to be done? The sag end of this article and one or perhaps two sections of the article on the Legislature relating to apportionment. All that remains after that, is the arrangement of the schedule, the perfection of the style, and the third reading, which as a general rule I am told is a formal reading, because unless the House goes into committee of the whole for the purpose of amendment, the vote is simply yea and or nay upon the different sections of the different articles.

Mr. NILES. On the whole article.

Mr. BIDDLE. On the whole article. Still better.

Now, I put precedent against precedent. The gentleman from Columbia (Mr. Buckalew) has found a precedent for our action now in the action of the Convention of 1837 and 1838. The Convention which framed the Constitution of 1776, and I vouch for this upon the authority of my friend from Greene (Mr. Purman) who sits before me, assembled on the 15th of July and sat to the 28th of September, the very time during which we are now called upon to adjourn. I am amazed at gentlemen standing up here and saying that they cannot work at this season when they have only to step out into any street in Philadelphia and they will find hundreds of men under this blazing sun running up and down a ladder with a hod upon their shoulders. They will find the wharves and public marts swarming with people working in the open air; every man of business in his counting-house, and the courts of the whole State sitting almost universally throughout the month of August. It is the month in which the courts generally sit. It is idle to tell me that we cannot work. We can cut off one-fourth of the whole year under this pretext.

Such an objection was never urged before. Men who stay away now will always stay away. They have stayed away in winter; they have stayed away in spring; they will stay away in the autumn just as they are staying away in the summer. Let them go in relays if they choose to go, but when I find the most venerable member of this House (Mr. Carey) at his place ready to work on, I

appeal to the younger members of the House to do the same. I hope the resolution will not prevail.

Mr. S. A. PURVIANCE. Mr. President: Whilst I submitted the present amendment to insert the article on the Legislature, I am nevertheless unyielding in my opposition to any adjournment of this Convention until we have closed our labors entirely.

Now, in furtherance of what has been said by the honorable gentleman from Philadelphia, (Mr. Biddle,) is there any suffering in this body now? Why, sir, to my own knowledge the XXXVth Congress at Washington city, on a sand bank, the hottest place in the Union, sat through the months of July and August until the eleventh of September, and according to my recollection not a single man suffered. No one was delayed from the performance of his duties on account of sickness.

Sir, we are now here in the middle of July, and one month more brings us into the middle of August, when the days become cool and the nights sometimes exceedingly so.

Now, again, why not remain here until August? Sir, I am of the opinion, formed deliberately, that this Constitution, if it is to be carried by the people, must be submitted at the October election, and I invoke the aid of the friends of reform throughout this body to stand by that idea or otherwise they will put in jeopardy the Constitution.

At the October election all the people will be out, and, sir, you are aware, as well as I am, of the fact that there will be a serious opposition to the carrying of this Constitution by corporations, by railroad men, by those who desire a continuance of the mode of legislation at Harrisburg. They will be out whether you have a special election or a general election; whilst on the other hand if you have a special election many of the friends of reform may remain at home.

Now, can we prepare this Constitution and submit it at the October election? I say we can, because we can close our labors here before the latter end of next month at most, and then we have almost two months between that and the October election, which comes on the fourteenth of October. Why not, then, sit on?

Sir, as Mr. Biddle very properly observed, we are now at the sag end, we might say, of the last article except that of the Legislature, and that article we have

had under discussion for days and for weeks, and there is a plan by which we can in one single day close our labors in reference to the construction of the Legislature, and that is this: Some twenty gentlemen have submitted plans for the construction of your Legislature, and I would suggest, inasmuch as there has been full discussion upon all these plans, that they be permitted to be read from the Clerk's desk, one by one, and the gentlemen who submitted them be allowed ten minutes to explain them, and then the vote can be taken upon them, the one having the lowest vote from time to time to be dropped, until we arrive at the plan of construction.

That I say is a feasible plan because we have discussed the subject for probably ten days already.

Now, sir, I do hope that we shall go through with the labors of our Convention here and be soldiers in the cause of reform, sitting here until the end of August if it be necessary.

Mr. BROOMALL. Mr. President: The great argument in favor of an adjournment is not the hot weather nor the probable sickly season ahead of us—

Mr. S. A. PURVIANCE. On a hot day the question of adjournment is brought up; on a cool day it is not.

Mr. BROOMALL. Although it is a matter of some importance that just to the southwest of us is a district worse a good deal than any other in Philadelphia, a district over which all the southwest winds come, through which the gentleman from Allegheny will not walk without holding his breath—I say that is something, but the great argument in favor of an adjournment is not that. I have advocated before and I advocate now an adjournment

or this reason: In order that before we finally part with the Constitution we shall have an opportunity of seeing what our constituents are going to say about it. It is the publication and getting the document before the people for their criticism that I desire in this adjournment. Why, to talk about passing a Constitution without any reference whatever to the people until we have gone to a stage beyond which we cannot amend it seems to me to be nonsense. If I am rightly informed, the first Constitution that was adopted in Pennsylvania after the Revolution was required to be submitted to the people not in the way of voting, but that the people should have a chance to talk over it four months before the Convention finally parted with it, and it was a valua-

ble proposition. I would rather have that than the vote, if I must have one and not the other, but I want both. It is an important consideration with me that we are a single body. If we want a law passed it must pass first the House, then after a while the Senate, and the object of that is to give an opportunity for deliberation in order that things may not be hastily done, but we submit the highest order of legislation to a single body, and we ask them to put that through without even hearing what their constituents are going to say about it before it is too late to amend it.

Now, my word for it, if we finish this business now, or at any time, without having submitted it, before we finally part with what we have done, to the people, we shall regret it before we have been at home two weeks, and if it was in the middle of winter, or at any other time of the year, wholly without regard to health and hot weather, I would say, let us see what our constituents say about what we propose to do before it is too late to amend, for be sure our constituents know that all the wisdom of the State is not in this body.

Mr. CARTER. Mr. President: I want to speak only three minutes; one minute in reply to the gentleman from Delaware, and two minutes in reply to the gentleman from Columbia.

There is nothing practical, it appears to me, in the suggestion of the gentleman from Delaware at all. He appears to think it necessary that this work shall be submitted in some way to the people before we take final action upon it. Now, the gentleman did not indicate how this is to be done.

Mr. BROOMALL. By publication, according to the resolution.

Mr. CARTER. How is the opinion of the people to be had on it? That is what I mean. Does he propose to hold a series of township meetings? Does he propose merely to consult around among his constituents? So far from any good being done in that way, I hold that it will make confusion ten times worse confounded. Every member will come back here with the crude ideas of his constituents and think it is his duty to represent them on this floor, and we shall not be half as well prepared to come to a conclusion as we are now. I say there is nothing in the gentleman's suggestion, not a scintilla of anything for rational men to consider for a moment. He proposes no way in which this thing is to be got at. Does he pro-

pose a series of township meetings and to take a vote, or how is an expression of the people to be had, or merely to talk around among his constituents? The more he talks the worse they and he will be confounded. We were sent here supposed to have sufficient intelligence to perform this work.

Mr. BROOMALL. Will the gentleman allow me to explain? My constituents have no crude ideas. I cannot talk with them a week without knowing more than I do now. His may be different; I do not know. [Laughter.]

Mr. CARTER. No, sir; but my constituents are so intelligent probably that they do not believe in buncombe. Mine are sufficiently intelligent not to believe in it, whether the gentleman's do or not. Both they and I can tell buncombe when we hear it, whether from the gentleman from Delaware or others.

You see now, Mr. President, that there can be nothing whatever practical in the gentleman's view. Now, in regard to physical ability, &c., you, Mr. President, are next to the oldest man in this body, the senior by years of most of us, and I heard you, sir, the other day, say that you never felt better. I never felt better in my life, myself, and I have but very few seniors in this body. You can go to no healthier city. Only about one hundred and fifty adults died here last week, which is less mortality than most other places, and this room is the perfection of comfort, and we are here working and in good working order at this time—if we will only settle down to it.

Now, in regard to the remarks of the gentleman from Columbia, (Mr. Buckalew,) it seemed to me that his argument stultified itself before he concluded. It was to this effect: That we should adjourn because the body was not full, but the gentleman forgot that we have nearly ninety votes here to-day, which is more than we have had in times past. He then went on to argue that we should adjourn in deference to gentlemen who were absent. I am not disposed to defer to the wishes of the gentlemen who are absent. If they chose to desert their posts, that is no reason why we should, in deference to them, adjourn this Convention and the great work which I believe it is destined to perform. The gentleman then went on to say that he thought their counsel would be necessary, that we were not in proper condition to finish our work, and finally concluded by saying that

everything had been talked over and argued at length in reference to the legislative article. If that be the case, are we not prepared to vote? Are we to wait until these gentlemen who are now visiting and gallivanting about come back and assist us in voting upon it. If we have discussed the legislative article, and they assisted in that discussion, are we not now prepared to dispose of it? Have we not had the benefit of their wisdom? Are not their thoughts and arguments and our own thoughts fresh in our minds?

Sir, I do not believe that the discussion of this legislative article will take the time the gentleman seems to suppose. I think it cannot be talked about much longer without danger of running ourselves into idioey. We have repeated each other's thoughts and ideas so much that it is psychologically unsafe for us to keep repeating and grinding over the same thoughts and ideas.

I think the time has come when we must exhibit a spirit of compromise and concession. I have a most determined repugnance to having every little county in the State represented in the Legislature, but inasmuch as on a fair and square vote of this body, there was a majority of twenty in favor of that idea, I yield. I know that one hundred and thirty-three men cannot get together on a work of this kind and succeed without making some concessions to each other's opinions; and I shall oppose no article for the reason that it does not carry out my ideas in every particular when I have done my duty in opposing it. I believe if we will go to work and discuss the legislative article, we shall astonish ourselves at the rapidity with which we shall get through our work.

I believe we are in just as good working order now as we ever shall be. I am talking to sensible men of this Convention. If there be members here who have a kind of boyish, school-boy haste to get away from their duty, I do not address myself to them, but to the thinking men of this Convention. I believe the adjournment will be unpopular, notwithstanding the *Allentown Gazette*. That is only one paper among six hundred. I think the general tone of the press is averse to our adjournment, and that it does reflect public sentiments.

One word more and I am done. The gentleman from Allegheny (Mr. Ewing) stated that he thought we had better ad-

to make the regulations proper for ordinary corporations in connection with jourm, we were becoming demoralized, because the gentleman from Potter (Mr. Mann) and the gentleman from Carbon (Mr. Lilly) did not talk as much as they used to do. It strikes me that is rather a reason for our continuing in session. If they are nearly talked out, as I think we all are, that certainly is a reason why we should go on with our work. Now, gentleman, I implore you, go to work; cease this talk about adjournment, and in ten days time this work can be consummated and perfected.

Mr. KAINE. I do not believe that this Convention is any better nor composed of any better material than the Conventions that have preceded it, no better than the Convention of 1790 or the Convention of 1837-8. Now, sir, the act of Assembly under which the Constitutional Convention of 1790 assembled had this provision in it:

Resolved, That in the opinion of this House a Convention being chosen and met, it will 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 said confirmation."

Under that they acted. They assembled here in the city of Philadelphia in November and they remained here until the last of February. They then adjourned until the eighth of August, and during that time they published in the newspapers of the State the Constitution as they had framed it. They met here on the eighth of August, and after four weeks consideration they finished the Constitution and adopted it. The Convention of 1837-8 met in Harrisburg on the second day of May and they remained in session until the fourteenth day of July of that year. They then took a recess until the fourteenth day of the following October. During that time the amendments that they had proposed to the Constitution were published and discussed by the people. I do not think we are so far in advance of those Conventions that our labors will lose anything by being submitted for a short time to the consideration of the people. I believe if we adjourn upon the completion of the article on railroads on second reading, to meet here in the middle of September, it will be an advantage to this Constitution and an advantage to ourselves.

I do not know that we are in such elegant working order. The gentleman from Lancaster (Mr. Carter) may be, but I confess that I am not. If there are enough gentlemen in this Convention, and a few of them would be sufficient to take up this Constitution and finish it so that one hundred and thirty-three men could sign it here within two or three or four weeks, I would say amen; but I must confess I do not want to be one of that number. I confess my inability to be one of that number. Therefore I hope the resolution offered by the gentleman from Columbia will prevail.

Mr. MANTOR. Mr. President: I have never spoken in favor of an adjournment. I believe on all occasions, save once or twice, and then for a temporary adjournment only. The other morning when this proposition was called up by the gentleman from Columbia (Mr. Buckalew) I voted against taking it up, and my reason for doing so was that I thought if we then adopted the proposition and we should meet here yesterday (Monday) morning, as we did, we should be unable to carry out the terms of the resolution; we should be left without a quorum. Now, I call upon the delegates here this morning to look around this Hall, and they will find there is absent about sixty members. Sir, why is it that sixty members are out of this Hall this morning?

SEVERAL DELEGATES. ["Forty." "Forty."]

Mr. MANTOR. I am told by the Clerk there are *sixty absent*, and I think my authority is good; but no matter whether the number be forty, fifty or sixty, what is the cause of their absence? Are the courts in session over this State? Not many that I know of. Gentlemen have got up on this floor and asked for leave of absence because of their inability to sit here, and this House has very kindly granted them leave of absence. Other gentlemen have got up here and asked leave of absence on the account of ill-health. I would not ask leave of absence because of ill-health; neither do I desire the Convention to adjourn because it is said we are sitting here in a malarious district. I am not afraid of the *cholera* or *small-pox* or *yellow fever*. I do not propose to die in Philadelphia at all. [Laughter.] I do not propose to be carried home in a box. *I may be, but such is my determination just now.* [Laughter.] I look over this body and I ask myself this morning the reason why I

shall vote for an adjournment. I voted for taking up the question this morning, and it is because there are from fifty to sixty members absent, and those men have gone home, and to *my certain knowledge* many of them with excellent health, and they will not return soon.

Now, we are told this morning that if this Convention adjourns we shall injure our work. There are men sitting in this body, and they are within the sound of my voice, who desire an adjournment, but yet *are afraid of their constituents*. God bless you, I say, and God bless our constituents. They do not, nor will not, make unreasonable demands on you or me. I believe a respite will work great good to every member, because "all work and no play makes Jack a dull boy." [Laughter.] Just eight months ago, on the twelfth of this month, this Convention assembled in the city of Harrisburg to do its work. What is the result? We have worked diligently, faithfully, and, I believe, honestly. I am going home if we adjourn, and if my constituency do not like it they can do the other thing. I must be the judge in some matters. The necessities of this Convention demand an adjournment just now, for to all appearance it is not in a condition to work. Delegates are tired and worn out with work.

MR. DE FRANCE. I should like to ask the gentleman a question. I ask, when there was these forty or sixty here, when was it that there were not that many members absent?

MR. MANTOR. I have never known so many absent at one time before. I have known there were always a great many men out of this Convention, but *it was for business purposes*. I understand the reason men are away now is for other purposes, some on the account of bad health, others because they cannot stand the heat of the city.

THE PRESIDENT *pro tem*. The delegate is under no obligation to answer the question.

MR. MANTOR. Certainly not, but I was doing it because I have the greatest respect for that gentleman, and his question is a civil one, and I cannot pass it by without a like answer. I shall vote for this proposition, because I think the time has come for a short adjournment, think that when we have consulted with our constituency, given them an idea of what we have done and what we propose to do, they will be prepared to sanction our

work by their ballots at an election called expressly to vote on this Constitution.

MR. ARMSTRONG. Mr. President: If I consulted my personal convenience and my personal interests, I would prefer to stay here until this Constitution is completed, for I suppose, in common with a great many others here, I have sacrificed a great deal of personal convenience as well as pecuniary interests in being here at all. It has been long evident that there is a large minority of this Convention decidedly in favor of an adjournment. Something is due to them. They have a right to be heard in a matter not touching any vital interest of the Constitution. It seems to me that the mere request, the expressed desire of so large a proportion of this Convention is entitled to such weight as that, from courtesy alone, we should adjourn if no evil is to befall our work by reason of it.

Now, sir, as to the question of the submission of this Constitution. After some reflection on this subject, I am satisfied that it is not practicable even if it would be judicious to submit it to the people at the October election, not only because if we attempted to do it we must hurry our work, but because we can at that time provide no guarantees against a fraudulent election. If we submit it in November at a special election we can provide in the schedule of the Constitution all necessary guarantees of a fair election. I do not mean to say that this Convention would have the right to pass an election law. I do not believe they could; but if we insert in the schedule of the Constitution certain limitations as to the mode of holding the election, as to the counting of votes and as to the returns of the election—by thus putting it into the Constitution itself to be passed upon by the people, we have, in this manner, the right to declare the forms and mode in which we will submit our work. We cannot provide such separate forms for the election in October, and the gentlemen who are best acquainted with Philadelphia, and I speak upon the authority of what has been said here, have no hesitation in saying as they have repeatedly done that if we submit this Constitution in October there will be counted against it just as many votes as the corrupt rings of both parties deem necessary to defeat it. In November we can provide our own machinery, without being at all complicated with the necessities of the ordinary elections for State officers. Therefore my

judgment is that we should be safer, as to the completion of our work, to submit it at a special election in November. If we continue to sit now, we cannot prevent these recurring discussions on the subject of adjournment; they spring up constantly; and we waste on an average about one-sixth of our time in these fruitless and dilatory discussions.

Now let us end this question by an adjournment which will be reasonable and will leave us time enough to consider all that remains to be considered and to come back with the question of adjournment entirely eliminated from our discussions, come back say in the middle of September, and with one solid month's work we can do all there is to be done. The ten minute rule will apply then as it does now; the debates will be limited, and the subjects of debate will be limited. We probably on third reading cannot go into the consideration of these articles section by section, but must vote upon the articles, going into committee of the whole for amendments occasionally when the Convention shall determine so to do.

We shall lose nothing by this recess. We shall come back refreshed, invigorated, and the people, having all our work before them, will have it thoroughly examined. There is probably not a paper in the State that would not be glad to publish the Constitution if it can be had in such a form that they can publish it in a connected and intelligible form; heretofore it has been in detached pieces, so that the members of the Convention themselves have not a very clear idea of what it is as a connected whole. Let us then have it published in pamphlet form for the use of the members; let it be circulated and published throughout the State, and we may derive some advantage from the comments of the press, from intercourse with individuals, and above all we shall have settled this question of adjournment and come back at a time when we have nothing to do but to go directly to work and finish it without interruption. We can complete it so as to leave at least one month for consideration by the people before the time we may fix for a November election. Under these circumstances, and voting, as I believe, both against my personal interests and my personal convenience, I shall vote to adjourn to the middle of September.

Mr. H. G. SMITH. After what has been so well said by the gentleman from Ly-

coming, I have very little to add. Two weeks ago, when contrary to what has been my course hitherto in this Convention, I voted for an adjournment, we were told that two weeks at the outside would finish the work of this Convention. We are here to-day confessedly a month at least from the end of our labors, if we sit on continuously.

The reasons for adjournment have been urged on this floor in such a manner as ought not to make this a doubtful question any longer. We can proceed, if we adopt the resolution now before this body, to the end of this article on railroads, then our work will be nearly completed, and it can be furnished to the entire press of the Commonwealth, and when you give to the newspapers of the Commonwealth a Constitution formed and finished up to that part on second reading, you will furnish them with other work to do than to carp and criticise the Convention. You will call their attention to the work so far formed as to be nearly complete, to the serious consideration of every newspaper editor in the Commonwealth, and you will have from the hour that this Convention adjourns until the time it re-assembles, from every honest and conscientious newspaper editor in this Commonwealth, the proper kind of criticism upon the work which you have done. If you will learn nothing from it, if the criticism will furnish you with no new ideas, you will at least know the opinions of the press upon your labors, and you will also be able to hear what your constituents think of the Constitution. They will read the Constitution as you have framed it, because it will be published in every newspaper in this Commonwealth without a dollar of cost, and you can learn from your constituents what their opinions are upon this question. Then you will return to your labors in the middle of September prepared to do your work well, with more enlightenment on the subject than you can possibly have at this time.

For these reasons, because I believe that the third reading of this article will be more important and should be more carefully attended to than any other stage of its creation, because I do not believe that this Convention is in proper condition to-day to finish its labors, I advocate the adjournment before it, and beg gentlemen to allow this recess, being assured that it will do more to secure the final passage of their work than anything that can be done.

Mr. CURTIN. If the Convention will indulge me, I desire to say a very few words on this question of adjournment.

It is not that we shall finish our work and submit it to the people that should be the important question for us to consider, but whether our work will be adopted by the people. The serious consideration is that the work will be well done so that it shall commend itself to the sound judgment and discretion of the public. In the beginning of this Convention it was decided to print the Debates in books of reports, and early in the session, after we had moved to this city, I offered a resolution to publish the Debates, with the amendments offered and adopted, in two papers of the city, every morning after the Debates occurred or the amendments were offered; but this was found to be too expensive, and the resolution fell.

The people know little of what we have done. Our work is in the volumes to be distributed to the members of this body, and very little has appeared in the public journals, and the people up to this time are not informed as to what we have done or what we propose to do. I cannot understand, therefore, that an eight weeks adjournment in this heated term can possibly effect the rejection or the adoption of our amendments to the Constitution; but I can well understand how that eight weeks may give the people an opportunity of discussion and examination.

I can understand how it is that the learned gentleman from Philadelphia (Mr. Biddle) desires to remain here. This is his home. It is not the season at which the courts wherein he has his large and lucrative practice are in session. I can well understand why other gentlemen of Philadelphia desire to remain here, and the gentleman from Lancaster, (Mr. Carter,) my excellent friend, has given us reasons for his desire to remain here from his robust and unimpaired constitution. I would that all the members of the Convention could boast of the good health and strong physical powers of that hale and hearty old man. We were not all cast in the same mould. We have not all enjoyed the pure invigorating air of Lancaster. It is impossible indeed to believe, from what he says of the morality of his constituents, that all the members of this Convention have not dwelt in that simplicity of high-toned and rigid morality which the gentleman so ably represents upon this floor. [Laughter.] I hope all

his constituents may live to his advanced age and enjoy his robust health and the confidence and respect with which he has inspired every member of this Convention for him personally.

But I beg my excellent friend to remember that some of us do not bear the heat quite as well as he does. We are not all salamanders. [Laughter.] Nor do I think all the people of Lancaster county are salamanders. [Laughter.] For I notice that while that gentleman retains the thick woolen clothing which he wore in the winter and sits in this heated period in a hall which he pronounces delightfully ventilated and beautifully cool, [laughter,] when the perspiration is rolling from many of the members that come from the interior of the State, I notice also that his colleague from Lancaster (Mr. H. G. Smith) is here in pure virgin white to-day, and he pleads in a most eloquent manner to be let out from this heated place that is so delightful and pleasant and healthful to the aged and robust gentleman. [Laughter.]

My friend from Potter (Mr. Mann) has said that we are now considering an article upon which we have all made up our minds. That is true, but unfortunately for the consumption of the time of this Convention, when we make up our minds we desire to express our reasons and conclusions, and I am quite sure that if my friend from Potter has made up his mind he will desire to express his reasons to us, which we always treat with respect. We all desire to express our views on all subjects considered because they go into a book, and in that book the members of this Convention find marked a highway to immortality. Will my friend from Potter now stifle debate at this very important period of our deliberations? When immortality is constantly approaching, and the highest measure we can get from our published Debates will be just at the end of the volume. Conscious that I have not consumed much of the time of this Convention—for I believe I have never spoken ten minutes at a time, and the volumes show but rarely—I do not go down to posterity in the books. [Laughter.] I wish I could get in a little more. It is a beautiful vehicle to go down to posterity in, and I think I will ask to go down as an outside passenger and have my name put on the fly-leaf. [Great laughter.] I suppose that if our opinions are made up, we must have the liberty of making speeches. Debate is free, and in this Hall certainly

as our long sessions fully attest. I voted against the adjournment from Harrisburg. That was the beginning of the error. I voted against the publication of these Debates. I desired that the people should be informed. But it has been truly said that it is impossible for us to submit these amendments before or at the time of the October election. And inasmuch as we cannot, let us publish what has occurred, what has been proposed, and what has been accomplished, and give it to the people to digest. Let the public journals discuss it. Let members learn from their constituents at home what their will is. We shall come back here refreshed, prepared by contact with the minds and judgment of the people, and better in all respects for the fulfillment of the remainder of the work which the people of Pennsylvania have assigned to us.

I am, therefore, in favor of taking this recess. I find personally that the heat is rather much for me, however it may be with other members, but I have worried it out until this time. I am painfully anxious that this Convention shall propose judicious reforms to the paramount laws of the Commonwealth, and I do not believe that this Convention is in a temper now to propose such reforms. I am equally sure that, whether we continue in session now or adjourn, no matter which, the question of comfort or privilege will not be considered by the people of Pennsylvania. When we submit our amendments, our adjournments, our protracted sessions, our debates will be forgotten, and the people of this State will sit down to a deliberate consideration of what we have done, and if our duty is well done and our work commends itself to them they will adopt it, and if not they will reject it, and the people of Pennsylvania do not care whether you sit on in this heated room or whether you adjourn and give your proceedings due consideration.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. S. A. Purviance) to add the words "and Legislature" after the word "railroads."

Mr. D. N. WHITE and Mr. TEMPLE called for the yeas and nays, and they were taken with the following result:

Y E A S.

Messrs. Alricks, Baily, (Perry,) Biddle, Black, Chas. A., Carey, Carter, Clark, Cochran, Cronmiller, De France, Ed-

wards, Fulton, Funck, Gilpin, Guthrie, Hall, Hay, Howard, Landis, Lawrence, Lilly, MacConnell, M'Clellan, Mann, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Rooke, Simpson, Smith, Wm. H., Temple, Wetherill, John Price, White, David N. and White, Harry—36.

N A Y S.

Messrs. Addicks, Ainey, Baer, Bailey, (Huntingdon,) Bannan, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Cassidy, Corbett, Corson, Curry, Curtin, Elliott, Ewing, Fell, Finney, Gibson, Green, Harvey, Hemphill, Heverin, Hunsicker, Kaine, Knight, Lamberton, Littleton, Long, M'Culloch, Mantor, Newlin, Niles, Palmer, G. W., Patton, Pughe, Reed, Andrew, Reynolds, Ross, Russell, Smith, H. G., Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., White, J. W. F. and Worrell—55.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Andrews, Armstrong, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Collins, Craig, Cuyler, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Hanna, Hazzard, Horton, Lear, MacVeagh, M'Cament, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, Jno. N., Read, John R., Runk, Sharpe, Stanton, Stewart, Wherry, Woodward, Wright and Meredith, *President*—42.

The *PRESIDENT pro tem.* The question is on the resolution.

Mr. MACCONNELL. I move to amend by striking out "fifteenth" and inserting "sixteenth" before "September." The fifteenth comes on Monday, and some of us can hardly get here on that day.

Mr. BUCKALEW. I accept the amendment.

The amendment was agreed to.

The *PRESIDENT pro tem.* The question recurs on the resolution as amended.

Mr. CAMPBELL and Mr. Worrell called for the yeas and nays, and they were ordered.

Mr. HAY. I ask for a division of the question, so that a separate vote shall be taken on each proposition.

Mr. D. W. PATTERSON. I was just going to call for that division of the question; but before the question is taken, I desire to say that I am opposed to adjourning over until September.

SEVERAL DELEGATES. Let us vote.

Mr. D. W. PATTERSON. You have the majority manifestly now, and I trust I shall be allowed to make a remark. I have not said a word on these resolutions heretofore. If gentlemen who are so anxious to adjourn would only go through the remaining four sections of this railroad article and then take up the article on the Legislature, it could be disposed of in two days, and they could then adjourn for about two weeks, at the end of which time the Committee on Revision and Adjustment and Committee on Schedule would be ready to report, and the delegates would then come back here recruited and could finish this whole thing in ten days, yea in five days we could go through the third reading.

Now, this resolution contemplates a separate and distinct election for the ratification of the Constitution. Not only does the resolution so indicate, but the mover of it says so. In my opinion, that is a great mistake. If we expect any part of this Constitution to be ratified, we must expect it to be done by the voters of the rural districts; that is manifest. My experience is, and I submitted the proposition to a number of gentlemen in this Convention and they say it is their experience, that at a separate and distinct election on this Constitution you cannot get the rural voters out. You cannot, in many of the counties, get the half of the voters out unless they have some neighbor to vote for some office or other in the county. Therefore, while the gentlemen who thus contemplate submitting the Constitution at a separate election may be sincere, I tell you it will be fatal to the adoption of any article of this Constitution. Although the people are much interested in the articles which we have adopted in regard to preventing special legislation, throwing restraints about the pardoning power, and with regard to the article on corporations—the only three articles in which they do feel a deep interest—yet depend upon it, if the Constitution is submitted at a separate election, you cannot get the people of the rural districts out, and they are the element that will adopt and ratify this Constitution, if it is ratified at all. It is manifest that many gentlemen of both parties in the cities are averse to reform in any particular, are averse to the restraints we have put on legislation, &c., and they will most likely carry the cities against any part of this Constitution. As for my-

self, there is much of the Constitution which we have formed that I should like to see ratified by the people. I can't say my judgment approves of all we have done, but much of it I think would prove greatly advantageous to the body politic.

I hope for that reason that this resolution will not pass, because if we adjourn over to September it is virtually saying that we cannot submit our amendments at the regular October election, and depend upon it, it is a great mistake. Gentlemen here living in the rural districts know how hard it is to get the voters out. If they come out, they will vote for reform; but you cannot get them out at a special election, whereas in the cities the leaders of both parties will bring out their voters, and their votes will be adverse to almost every article in this Constitution. For this reason I trust the resolution will be voted down, especially as we are so near the end of our work that three days more will put us through the second reading of *all* the articles, and then the great mass of the Convention could adjourn for two weeks and the Committee on Schedule and the Committee on Revision and Adjustment can go to any cool place and perform their duty in the meanwhile—in two weeks could be ready to make their report to this Convention. The Convention can then meet and finish this Constitution and submit it to the people in October. I repeat that in two weeks the Committees on Schedule and on Revision and Adjustment can be ready to report. I am a member of both those committees, and we have advanced considerably already and will be ready to report back to this Convention by that time. Then the great mass of the members here would be recreated. They could go to the seaside or the mountains and get back, and have good tempers and sufficient physical constitution to do all the duty that would be required on third reading, which in my opinion could be done in ten days or two weeks at the furthest. Now, I protest against this long adjournment. I hope this resolution will not pass, but let us go on this week with our work and complete the second reading of all the articles, and then let the Committees on Schedule and on Revision and Adjustment go to work and make back their report for final action as I have stated. The people expect to vote on the Constitution in October, and it seems to me, sir, that every friend of reform should be willing to sacrifice their personal con-

venience in order to meet the public expectation. We can and should submit the new Constitution at the regular October election.

The *PRESIDENT pro tem.* The question is on the first division of the resolution, which will be read.

The *CLERK* read as follows:

"That when the article on railroads shall have passed second reading, the Convention will adjourn to meet again on the sixteenth day of September next, at ten o'clock A. M.

Mr. *ACHENBACH.* I desire to state that I am paired off on this question with the gentleman from Philadelphia (Mr. J. R. Read.)

The question being taken by yeas and nays resulted as follows:

Y E A S .

Messrs. Addicks, Ainey, Armstrong, Baer, Bannan, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Cassidy, Corson, Curry, Curtin, Cuyler, Elliott, Ewing, Fell, Green, Hall, Harvey, Hemphill, Heverin, Hunsicker, Kaine, Knight, Lamberton, Lear, Littleton, Long, MacConnell, Mantor, Newlin, Palmer, G. W., Patton, Pughe, Reynolds, Ross, Smith, H. G., Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., White, J. W. F. and Worrell—51.

N A Y S .

Messrs. Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Campbell, Carey, Carter, Clark, Cochran, Corbett, Cronmiller, De France, Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Landis, Lawrence, Lilly, M'Clellan, M'Culloch, Mann, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Simpson, Smith, Wm. H., Temple, Wetherill, Jno. Price, White, David N. and White, Harry—43.

So the first division of the resolution was agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Collins, Craig, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Hanna, Hazzard, Horton, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Wherry, Woodward, Wright and Meredith, *President*—39.

The *PRESIDENT pro tem.* The second division will be read.

Mr. *TURRELL.* I move to reconsider the vote just taken, and to lay that motion on the table.

The *PRESIDENT pro tem.* It is moved to reconsider the vote just taken.

Mr. *HOWARD* and Mr. *DEFRANCE* called for the yeas and nays.

Mr. *TURRELL.* My motion was to reconsider and to lay the motion to reconsider on the table.

Mr. *LITTLETON.* Was the motion seconded?

Mr. *ADDICKS.* I second it.

Mr. *TURRELL.* To save time I withdraw the motion.

The second division of the resolution was read as follows:

"That articles passed on second reading, including the legislative article, be reprinted as amended and that three thousand copies thereof in pamphlet form be printed for general distribution."

Mr. *EDWARDS.* I call for the yeas and nays.

Mr. *D. W. PATTERSON.* I second the call.

Mr. *CLARK.* Mr. President: I rise to ask a question of the Chair. By this resolution is it proposed that the articles as they now are or as they are to come from the hands of the revising committee, when they pass that committee, are to be printed?

Mr. *BUCKALEW.* As they are now.

The *PRESIDENT pro tem.* As they are at the time we adjourn, the Chair supposes. The Clerk will call the names of delegates on the second division of the resolution.

The *CLERK* proceeded to read the roll.

Mr. *LILLY* [when his name was called.] If this printing is to be of the Constitution without revision or adjustment, I am opposed to it, but as I am assured by the gentleman from Columbia (Mr. Buckalew) that it will be revised, I vote yea.

The result was announced as follows:

Y E A S .

Messrs. Addicks, Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Carey, Cassidy, Clark, Corson, Cronmiller, Curry, Curtin, Cuyler, Dallas, Edwards, Elliott, Ewing, Fell, Finney, Funck, Gibson, Green, Hall, Har-

vey, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Knight, Lamberton, Lilly, Littleton, Long, MacConnell, M'Clean, Mantor, Niles, Palmer, G. W., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Ross, Smith, H. G., Smith, Henry W., Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F. and Worrell—68.

N A Y S.

Messrs. Biddle, Cochran, Corbett, De France, Fulton, Gilpin, Guthrie, Hay, Landis, Lawrence, Lear, M'Culloch, Mann, Newlin, Patterson, D. W. Patterson, T. H. B., Porter, Purviance, Samuel A., Rooke, Russell, Simpson, Smith, Wm. H., Struthers, White, David N. and White, Harry—25.

So the second division was agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Campbell, Carter, Church, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Hanna, Hazzard, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Temple, Wherry, Woodward, Wright and Meredith, *President*—40.

The third division of the resolution was read as follows:

"That this Convention will submit the revised Constitution proposed by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next."

Mr. T. H. B. PATTERSON. I call for for the yeas and nays on that.

Mr. D. W. PATTERSON. I second the call.

The *PRESIDENT pro tem.* The Clerk will call the names of delegates.

Mr. CUYLER. I do not know whether debate is in order, but I hope that resolution may not pass.

The *PRESIDENT pro tem.* Debate is not in order. The Clerk will proceed with the call.

Mr. ADDICKS answered to his name.

Mr. HARRY WHITE. Before the yeas and nays are called—

The *PRESIDENT pro tem.* They are called.

Mr. HARRY WHITE. I simply wish to call attention to—. ["Order." "Order.""]

The *PRESIDENT pro tem.* The Clerk will proceed with the call.

The yeas and nays were taken with the following result:

Y E A S.

Messrs. Addicks, Ainey, Alricks, Baer, Bally, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cassidy, Clark, Corson, Cronmiller, Curry, Curtin, Dallas, De France, Elliott, Fell, Gibson, Green, Guthrie, Hall, Harvey, Hay, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Lamberton, Landis, Lawrence, Lear, Lilly, Littleton, Long, MacConnell, M'Clean, Mann, Mantor, Niles, Palmer G. W., Patterson, T. H. B., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F., and Worrell—74.

N A Y S.

Messrs. Black, J. S., Corbett, Cuyler, Edwards, Ewing, Finney, Fulton, Gilpin, Knight, M'Culloch, Newlin, Patterson, D. W., Porter, Simpson, Struthers and White, Harry—16.

So the third division was agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Armstrong, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Cochran, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Funck, Hanna, Hazzard, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Sharpe, Stanton, Stewart, Temple, Wherry, White, David N., Woodward, Wright and Meredith, *President*—43.

PUBLICATION OF ARTICLES.

Mr. BROOMALL. I offer the following resolution:

Resolved, That the Committee on Revision and Adjustment are directed to prepare the articles for publication, making such verbal changes as shall be necessary, and designating the modifications they propose to make in italics.

The *PRESIDENT pro tem.* The question is on proceeding to the second reading and consideration of the resolution.

Mr. HARRY WHITE. On that question I call for the yeas and nays.

Mr. T. H. B. PATTERSON. I second the call.

Mr. COCHRAN. I hope that the resolution will not be adopted and that whatever is to be published will be published in the form in which it passes the Convention. I have no idea of putting into the hands of the Committee on Revision or any other committee the power to publish what this Convention has not acted upon, which may lead to confusion in the public mind. A verbal change may be a very significant change.

The PRESIDENT *pro tem*. The question is upon proceeding to the second reading and consideration of the resolution. Upon that question the yeas and nays have been ordered, and the Clerk will proceed with the call.

The yeas and nays were taken and were as follow, viz:

Y E A S .

Messrs. Ainey, Armstrong, Baer, Ban-
nan, Boyd, Brodhead, Broomall, Brown,
Buckalew, Corbett, Corson, Curry, Curtin,
Cuyler, Elliott, Green, Hunsicker, Lear,
Lilly, Littleton, M'CLean, M'Culloch,
Patton, Pughe, Purman and Walker—26.

N A Y S .

Messrs. Achenbach, Addicks, Alricks,
Baily, (Perry,) Bailey, (Huntingdon,) Biddle,
Bigler, Black, Charles A., Black, J. S., Calvin,
Campbell, Carter, Cassidy, Cochran, Cronmiller,
Dallas, De France, Edwards, Ewing, Fell,
Finney, Fulton, Funck, Gibson, Gilpin, Guthrie,
Hay, Horton, Howard, Kaine, Lamberton, Landis,
Lawrence, Long, MacConnell, Mann, Mantor,
Newlin, Palmer, G. W., Patterson, D. W.,
Patterson, T. H. B., Porter, Purviance,
Samuel A., Reed, Andrew, Reynolds, Rooke,
Ross, Russell, Simpson, Smith, Henry W.,
Smith, Wm. H., Struthers, Turrell, Van Reed,
Wetherill, J. M., Wetherill, Jno. Price, White,
David N., White, Harry and White, J. W. F.—60.

So the Convention refused to read the resolution a second time.

ABSENT. — Messrs. Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Bullitt, Carey, Church, Clark, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Hall, Hanna, Harvey, Hazzard, Hemphill, Heverin, Knight, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Purviance, John N., Read, John R., Runk, Sharpe, Smith,

H. G., Stanton, Stewart, Temple, Wherry, Woodward, Worrell, Wright and Meredith, *President*.—47.

TO-DAY'S SESSION.

Mr. BROOMALL. I offer the following resolution:

Resolved, That this morning's session be prolonged without recess until the article now pending shall have passed second reading.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for and the ayes were thirty-seven.

Mr. HARY WHITE and Mr. DE FRANCE called for the yeas and nays, and they were taken with the following result:

Y E A S .

Messrs. Addicks, Ainey, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Ban-
nan, Barclay, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Calvin, Cochran, Corbett, Corson, Curry, Curtin, Cuyler, Elliott, Finney, Funck, Hall, Harvey, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Littleton, Long, M'Culloch, M'Murray, Mantor, Newlin, Patton, Pughe, Purviance, Sam'l A., Reed, Andrew, Reynolds, Ross, Struthers, Turrell, Van Reed and Wetherill, J. M.—49.

N A Y S .

Messrs. Achenbach, Baily, (Perry,) Biddle, Bullitt, Campbell, Carey, Carter, Cassidy, Clark, Cronmiller, Dallas, De France, Edwards, Ewing, Fell, Fulton, Gibson, Gilpin, Green, Kaine, Landis, Lawrence, Lilly, MacConnell, M'CLean, Mann, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Rooke, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Walker, Wetherill, Jno. Price, White, David N., White, Harry and White, J. W. F.—40.

So the resolution was ordered to a second reading, and it was read the second time and considered.

ABSENT. — Messrs. Andrews, Baker, Bardsley, Bartholomew, Beebe, Bowman, Brown, Church, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Guthrie, Hanna, Hay, Hazzard, Heverin, Lear, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Porter, Purman, Purviance, John N., Read, John R., Runk, Russell, Sharpe, Stanton, Stewart, Temple, Wherry, Woodward, Worrell, Wright and Meredith, *President*.—41.

Mr. BROOMALL. It is suggested that inasmuch as we are close to the hour of recess the resolution had better read "this afternoon's session." ["No." "No."] I do not propose to amend it; I only make that suggestion.

The resolution was agreed to.

COMMITTEE ON REVISION.

Mr. CALVIN submitted the following resolution, which was ordered to lie on the table:

Resolved, That the chairmen of each of the committees be added to the Committee on Revision and Adjustment.

PRINTING ACCOUNTS.

Mr. HAY. I desire at this time to ask that the resolution attached to the report of the Committee on Accounts and Expenditures, submitted yesterday, be taken up.

Mr. ADDICKS. I trust the gentleman will not press his motion now.

The PRESIDENT *pro tem*. The question is on the motion of the gentleman from Allegheny (Mr. Hay.)

The motion was not agreed to, the ayes being twenty-four, less than a majority of a quorum.

SALE OF DRAPING.

Mr. ADDICKS. The Committee on House have a small sum of money in their possession. They desire to make report upon it. There is a resolution annexed, and I trust they will be allowed to take up the resolution. It will not take any time.

Leave was granted, and the report was received and read as follows:

The Committee on House submit the following report:

That inasmuch as the material used for draping the Hall was not further required the committee ordered it to be disposed of, and now present to the Convention a check for the proceeds, seventy-five dollars, and suggest that the annexed resolution be adopted:

Resolved, That the Chief Clerk be directed to remit to the State Treasurer the annexed check for seventy-five dollars, to be placed in the Treasury of the State as received from this Convention.

The resolution was read twice and agreed

CARE OF HALL.

Mr. ADDICKS. I hold in my hand a resolution which it is necessary at this time should be adopted (because we may

adjourn almost at any moment) so that somebody may have authority to take charge of this House during the recess of the Convention. I may say that it is an identical copy of the resolution passed on the twenty-eighth day of March last. It is as follows:

Resolved, That during the recess of the Convention the Committee on House shall take entire charge of the Hall and the property therein, and they are hereby authorized at their discretion to engage such employees as may be required for such duty.

The resolution was read twice and agreed to.

COMMITTEE ON ACCOUNTS.

Mr. HAY submitted the following resolution, which was read twice and agreed to:

Resolved, That the Committee on Accounts and Expenditures of the Convention have leave to sit during its recess; and that all persons having claims against the Convention be required to promptly furnish to said committee their accounts up to the time of the adjournment, in order that the same may be audited.

PRINTING ACCOUNTS.

Mr. H. G. SMITH. I apprehend that the Convention voted inadvertently a moment ago in reference to the report of the chairman of the Committee on Accounts. He has rendered a carefully prepared statement of the accounts between this Convention and the State Printer, which ought certainly to be taken up and acted upon; and inasmuch as some business has intervened between the vote taken a little while ago and the present moment, I move that we now proceed to the second reading and consideration of the account as stated. This question ought certainly to be settled before we adjourn.

The motion was agreed to, and the following resolution reported by the Committee on Accounts and Expenditures was read the second time and considered:

Resolved, That there is due to Benjamin Singerly, Printer for the Convention, in full of all claims to the fifteenth day of May, 1873—excepting items in the account above mentioned yet to be fully audited, together amounting to the sum of \$2,060 45—the sum of \$9,333 27, on account of which has been heretofore paid the sum of \$5,000 00; and that a copy of this report and of the action of the Convention thereon, be forthwith transmitted by the

Chief Clerk to the Auditor General of the Commonwealth.

Mr. HAY. I desire now simply to state that the accounts of the State Printer up to the fifteenth of May, mentioned in this report, have been very carefully and thoroughly investigated by the Committee on Accounts, and they have reported this resolution believing that their action in the matter has been entirely correct, and in accordance with the requirements of the law. While I have no desire at this time to go into any explanation of the matter further than may be necessary, being reluctant to occupy the valuable time of this Convention, I am very anxious to give the members of the Convention any information they may desire on this subject, and will be very happy to answer any interrogatories that may be addressed to me upon it. There is a further unsettled account up to the first day of July yet in the hands of the committee.

Mr. HARRY WHITE. I have just one question to ask. I see an item here for Small's Hand-Book at \$1 25. I remember making a statement at the time that it would cost the Convention ninety cents. May I inquire of the chairman of the Committee on Accounts at what price they settled for that?

Mr. HAY. In reply to the interrogatory of the gentleman from Indiana, I desire to state that it was the understanding of the committee that these books were to be furnished to the Convention at the same price at which they were furnished to the Legislature—ninety cents, and that is the price accordingly allowed the State Printer for them.

The PRESIDENT *pro tem*. The question is on the resolution.

The resolution was adopted.

RAILROADS AND CANALS.

Mr. HALL. I move that the House proceed to the further consideration of the article on railroads and canals.

The motion was agreed to, and the Convention resumed on second reading the consideration of the article on railroads and canals.

The PRESIDENT *pro tem*. When the Convention adjourned last evening the pending question was on the amendment of the delegate from Lebanon (Mr. Funk) to the tenth section. The section and amendment will be read.

The CLERK. The tenth section as printed reads as follows:

SECTION 10. All municipal, railroad, canal and other corporations and individuals shall be liable for the payment of damages to property resulting from the construction and enlargement of their works, as well 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.

The amendment is to strike out all after the word "section" and insert:

"No corporate or municipal body or individual shall take private property for public use, or injuriously affect it by change of character of highway or otherwise, without being required to make compensation to the owner thereof for all damages, direct or consequential, resulting from such taking or injury. And such compensation shall be paid or secured before such property shall be taken or injured."

Mr. BIGLER. I desire the attention of the Convention for a very few minutes on this subject. It is one of very grave importance, and it ought to command the attention of the legal minds of this body.

Now, sir, neither the text of the section nor the amendment will answer the purpose, and it seems to me it would be quite out of the question to make the regulations proper for ordinary corporations in connection with those for railroad corporations. The damages are entirely different. Take, for instance, a corporation for mere manufacturing purposes. It may impose damages upon property in the neighborhood and it confers no incidental benefits or advantages. So it may be with regard to the works of municipal corporations. But a railroad corporation anywhere in the country, in any agricultural district, bestows great indirect benefits which are fairly matters of consideration when you come to inquire into the amount of damages inflicted.

There may be, I suppose there are, and yet I do not know that I could name a single instance in which property has been damaged by the construction of a railroad where the indirect benefits have not quite outweighed the damages. There may be cases where a very small property is injured and there is but little in a beneficial way to act upon. But, sir, go into a new country, and the indirect benefits of a railroad are wide-spread and general, far beyond all the indirect or consequential damages to which both these propositions refer.

I maintain that they should be separated, that the provisions which are proper for a railroad corporation would not meet the case of a local or private corporation intended for purposes of individual gain and profit. The railroad is a great public institution, and it comes with its blessings especially in an agricultural community. The usual effect is that land worth, before the railroad was constructed, five or six dollars an acre, commands immediately ten, fifteen or twenty dollars. You may take a small amount of land for the road-bed, and yet leave the owner of that property worth double or treble the money he was before the railroad was constructed. That is almost a universal rule in all new countries; and yet under this section there would be claims set up for incidental or consequential damages. I have no hesitation in saying that the use of the term "consequential damages" in regard to the construction of railroads would have a directly damaging influence upon enterprises of that character. There are timid capitalists who would not hazard their money in an enterprise because they could not see what this term "consequential damages" might fully signify.

Then there is another consideration. Up to this time railroads have been constructed simply upon the principle that the citizen shall be paid for his property or security given for the payment before it is taken. Consequential damages have not been imposed. Are we, at this day, to confess to all the world that, so far, our policy has been an unjust one? Are we to awaken expectation in the minds of thousands and thousands of men that they have suffered consequential damages at the hands of the State by her laws and policy, and that now they ought to have justice? Are we to get up a great contest of this character? We ought not to do so—not that I do not agree that any just claim of a citizen ought to be met by the government, but the wide-spread blessings of the government and the wide-spread blessings incident to these improvements have, I think, protected all our people. It is the rarest case; I do not know of a single one, but I can imagine a case of a town lot so seriously damaged, particularly in a region where railroads are plenty, that there would be a fair claim for damages that would be called incidental or consequential.

Now, sir, I offer, if I have a right to do it, and I believe I have, as an amendment to the amendment, to strike out all after the enacting clause of the pending amendment and insert the following:

"Railroad corporations shall not take or appropriate or damage private property without first making compensation or giving ample security for the same; but in ascertaining the value of the property and the amount of damages by a jury or any court, the direct and indirect benefits of the railroad to the owner or owners of the property taken or damaged shall be considered in mitigation of the amount to be paid."

Mr. BUCKALEW. I inquire if that is a substitute for the other proposition?

The PRESIDENT *pro tem.* It is.

Mr. BUCKALEW. The material difference, I observe, is that this amendment is confined to the mere taking of property. It does not cover at all the question of injury to property without taking it. Now, a canal might be made along the line of real estate, and by its construction land not actually taken by the canal company, but flooded and thereby ruined by it, would not be covered by the amendment. It would not be within the ordinary principle of appropriation of land, at least. Perhaps the word "taking" might receive such a liberal construction as would cover it.

Mr. BIGLER. The use of the word "construction" might meet the views of the delegate.

Mr. BUCKALEW. I think if we adopt a section on this subject at all, it ought to cover both the question of the taking of property and the damage to property without taking it.

Mr. ALRICKS. The amendment of the gentleman from Clearfield does not touch the question involved in this case. He has followed the provisions of an act of Assembly in relation to the assessment of damages done by the construction of railroads. Now, sir, the right of eminent domain is in the Commonwealth, and when the Commonwealth grants to a corporation the right to take the property of an individual, unless she especially provides for the payment of damages, the party can recover no damages unless his property is taken. If I understand the section as offered by my colleague, the gentleman from Lebanon, (Mr. Funck.) it provides that there shall be a provision for the payment of damages, notwith-

standing the right of eminent domain is in the Commonwealth, and no property is taken, but property is injured or destroyed.

Now, Mr. President, you cannot have a better case by way of illustration than that of *Shrunk vs. The Navigation Company*, to be found in 17 Sergeant and Rawle. There the Schuylkill navigation company were authorized to build certain dams in the Schuylkill. Shrunk, the person who was injured, owned a valuable fishery. I do not know whether it yielded him \$10,000 a year, or how much, but it yielded a large sum of money annually. They destroyed his fishery, and he wished to recover damages, and he would have been entitled to damages if the act of Assembly had said that the owner of all property injured by that company could recover damages; but it did not say so. It said that wherever property was taken, the party could recover damages. Here the property was not touched at all and the party could not recover a dollar's damages, because, as the Supreme Court said, it was *damnum absque injuria*;—the doctrine ought never to prevail in Pennsylvania, it should never be allowed in any free country, that there was such a thing as *damnum absque injuria*; it should be repudiated; but the right of eminent domain was in the Commonwealth, and the Commonwealth allowed the Schuylkill navigation company to make the improvement, and the Commonwealth said, "if you take any land, the owner of the land can recover damages;" but they took no land, they took no property, they only injured property consequentially or incidentally, and the party lost his damages. Since that time I suppose there have been a hundred like cases in Pennsylvania. There was one in Pittsburgh; one occurred in my own county; and they are occurring every day, where property is injured by a corporation in the exercise of a corporate right which they receive from the sovereign, and the sovereign having the right of eminent domain, what he does not say they shall be paid for, they lose.

Now, Mr. President, I greatly prefer the amendment which is offered to the section by my colleague from Lebanon, because it appears to me that it meets the precise wants of the case, and a party could recover damages even if his property was not taken. This question was very fully discussed before, and the able and the venerable President of this Convention gave

us his opinion at large on the subject, and then it was very fully understood. The gentleman from Allegheny (Mr. Purviance) presented it to this Convention in a very clear point of view, and the Convention, acting on those suggestions, adopted the section that we have before us. But the section we have before us is a little obscure in using the word "occupied." You do not know how to apply that word, whether it means occupied by the owner of the soil or occupied by the corporation; but the amendment offered by my colleague from Lebanon is entirely clear; there is no difficulty about it.

Mr. President, all that we ask in this case is that an artificial person shall be responsible for damages the same as a natural person. That is perfectly right, and that is all that ought to be done. The artificial person now is not responsible for damages the same as a natural person, simply because the law says that if the property is taken the corporation shall pay for it; but it does not say that if incidental damages are done to a property you can recover anything, and therefore you cannot recover. Now, if two persons be the owners of adjoining properties, and one of them chooses to run his wall down so deep so as to throw the wall of the adjoining property down, he is responsible for damages if he is guilty of any negligence in doing so; but if corporations do that, they cannot be held responsible simply because the law is not broad enough to cover the case.

I trust that this amendment which has been offered by my colleague, the gentleman from Lebanon, will prevail, or else the section as it passed the House before will be adopted. I trust the amendment of my friend from Clearfield will not be considered, as it does not cover the whole case.

Mr. BIDDLE. Mr. President: The printed section ten, as reported in this article, is designed to cover all bodies, municipal as well as private corporations and individuals, who may take property for public purposes, and is also intended to cover that injury which, technically, is called "consequential," resulting not from the taking of property but from its being injuriously affected by a proposed public improvement. Now, so far as my recollection goes, at the time the language of this tenth printed section was introduced, we were all of us of opinion that both of these views were proper views to express in adequate language in the Constitution; that is to say, we all thought

an indirect, substantial injury should be covered as well as the mere taking of property, the one injury being represented to the mind of a lawyer by an action on the case, and the other by an action of trespass.

The distinguished President of the Convention took exception to the use of the term "consequential damages" or "consequential injuries," but in my humble opinion without that reflection which he almost always brings to the subject before him, because the language used—"consequential"—is the language of the law, and every legal mind sees at once the distinction between a direct and consequential injury, from the form of action. He is reported to have said—and I believe did say—that the present section gave us in better language the thought desired to be reached by the Convention than the language formerly used. I respectfully differ from that proposition. I think a very slight examination of this section will show that it is defective, and I have been told—I do not say this on any authority, if other gentlemen who can speak choose to speak, they will speak; what I am about to say; I do not say upon any authority of my own, for I never heard him speak afterwards on the subject, but I am told that he has said that he was not satisfied with the present section. I say that from what has been told me, but not authoritatively at all.

On the second line we find "shall be liable for the payment of damages to the property." There are two thoughts involved there, but the phrase is inaccurate. The word "damages" there means the sum of money that is to be paid for injuries. It reads "for the payment of damages to the property." If the thought was written out properly it would be "for the payment of money for damage caused to property," or "for the payment of damages for injury to property." The very slightest examination will show that that is the fact. Therefore the amendment offered by the gentleman from Lebanon has the advantage of precision.

I am not certain that there is not an awkward assertion in the amendment offered by the gentleman from Lebanon, and I say it the more readily because I had something to do with it myself; but I am not certain that it is not a little awkward to talk of property being "injuriously affected by change of character of the highway or otherwise." The thought is

a good one, but the expression is a little rough.

I hold in my hand what has been written and I hope will be offered by the gentleman from Dauphin, (Mr. Lambertson,) which I think is very precise and accurate and covers all the views, and it has the very great merit of being taken almost literally from the language of the judge who pronounced the decision in the case of O'Connor vs. Pittsburg, which the Convention will recollect was the case of the church left upon a bluff by a change of the grade of a highway, where an ineffectual attempt was made to obtain redress for that injury and where the court said they had held the case under advisement for some time to see if they could not redress this grievous injury. The language written by the gentleman from Dauphin is this—it is very compact, and I think covers all the cases:

"Municipal and other corporations and individuals vested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction."

MR. BIGLER. I am willing to withdraw my amendment in order that that may be offered.

THE PRESIDENT *pro tem*. The amendment to the amendment is withdrawn.

MR. LAMBERTSON. Then I offer this amendment to the amendment:

"Municipal and other corporations and individuals vested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction."

MR. BIDDLE. That, Mr. President, covers the case, in my judgment, very admirably. I prefer it very much to that which I had something to do with. It covers both thoughts; it reaches all corporate bodies, municipal and otherwise, as well as individuals, who take private property for public use, and it meets both classes of injury.

Now, I wish to say a word or two, within the limits of my time, as to this latter point, and that is, why should not such injury be paid for? An indirect injury,

or, as it has been called, a consequential injury, may be a great deal more fatal to property than the taking of a very small portion of it. For instance, it will occur to almost everybody that the casting of filth or of water upon the whole body of a man's land injures it, or may injure it, a great deal more than the actual deprivation of a small corner of it. The one may be a standing continual nuisance; the other is measured by the actual dollars which the piece of property taken cost or is worth.

So, again, it must occur to everybody that having a highway to which one has had access heretofore, suddenly closed or diverted, or so impeded as not to be rendered as valuable as it theretofore was, is a much greater injury than to take a little of the property.

Now, I want to put before the Convention a very flagrant case that is occurring in our midst in this community. The Union Passenger railway company obtained the right to lay down additional tracks in Market street, and after some contestation in court it prevailed in a certain way and it has actually laid them down, and it has laid one of its tracks so close to the curb-stone that the merchants and store-keepers using that street to bring to and send from their warehouses goods and merchandise are actually prevented having drays and carts and furniture-wagons stopping the proper time before their places of business, and it has gone so far as to reach this point, that a drayman in the fair exercise of his employment in either taking goods to a warehouse or receiving them from it—and it is not important which—has been fined four dollars by an alderman of this city for obstructing the highway, when the real obstruction has been caused by the laying down of this rigid iron track by the Union Passenger railway company, and a prosecution instituted by them has so resulted; and unless the court will review the merits on *certiorari*, (which perhaps they can do and perhaps they cannot, the sum being under five dollars and thirty-three cents,) the Union passenger railway company is master of the situation, and it actually will continue running its cars up and down this rigid track and to a great extent destroy the value of that most valuable property, put there at enormous expense, between Seventh and Ninth streets and Front street, on Market street. That property will be measurably injured to a very large extent.

It is to meet cases like that that the language introduced by the gentleman from Dauphin (Mr. Lamberton) is used, and it ought to be introduced to meet such cases. You may say that section eleven of this printed article provides for that case, because it prevents in the future the laying down of passenger railway companies' tracks in municipalities without the consent of the councils. To a certain extent, that does; but we want by this section to meet an actual case and to prevent a grant like this whereby a man shall be indirectly almost injured out of the value of his property. I can see no objection in the way of the argument that has been urged, and to some extent may be urged again, against the passage of this section, on the supposition that if it be adopted improvements will be checked. I do not believe that. The damages will not be indefinite; they are under the control of a court and jury just as much as all damages. In an action upon such a case it will be first for the jury and then for the court, reviewing the action of the jury, to say whether the damages are excessive or not, and necessarily they will do what the language of the amendment of the gentleman from Clearfield (Mr. Bigler) had in view, taking into consideration the supposed advantage, because the last rule laid down on the subject in one of the recently decided cases, in P. F. Smith's reports, is that the damage is the difference between what the property was worth just before the improvement was made and what it is worth afterward. Therefore necessarily the supposed benefit will enter into mitigation of the supposed damage.

Hence I trust that the section will be amended according to the language of the substitute which is now the only amendment before the House, offered by the gentleman from Dauphin, because, to sum up, it covers the case of all corporate bodies, municipal and private; it covers individuals; it covers all injury, as well the injury resulting from the direct taking as that resulting from injuriously affecting the property in the different ways which I have endeavored to point out.

Mr. MACCONNELL. I merely want to refer the delegates to one case that I think will show very clearly the necessity of having a change in the present law on this subject. I refer to the case of O'Connor against the city of Pittsburg. A congregation had built and extended a

church according to the grade of the street as it had then been established. Afterward the city altered the grade and cut it down some twelve feet, I think, and the result was that it involved the destruction of the church. For that injury Bishop O'Connor brought a suit against the city of Pittsburg. It was tried and there was no difficulty in proving that the injury had been done, and the only defence set up was that it was consequential damages, and that therefore there was no remedy. The court so held the law to be. The congregation lost its church, and afterward it built a new church, an immensely large structure, one of the finest in the State, according to the changed grade. Now I see by the newspapers (and I often heard of it when I was home last) that a project is agitating and likely to be carried into effect to lower the grade of that same street some seventeen feet, right by that church. I see by the papers that that congregation has held a congregational meeting on the subject, and on the report of experts came to the conclusion that the reduction of the street grade would involve the destruction of their church. Yet it is being insisted upon, and it is not very unlikely that it will be carried out, and if it is carried out under the law as established by the courts in the first case, the church congregation will not be able to get one dollar of compensation unless you put such a provision in the Constitution as this amendment contemplates. The court declared that it was a most monstrous hardship that the church could not be made whole for the injury it sustained in the first place. Now, will it not be a more monstrous hardship if their magnificent building is to be destroyed the second time and the law afford them no remedy?

Mr. J. W. F. WHITE. Will my colleague allow me to ask him a question?

Mr. MACCONNELL. Well, sir?

Mr. J. W. F. WHITE. In the act of 1863 with reference to the grading and re-grading of the streets of the city of Pittsburg, is there not a section providing that any person injured by the re-grading of the streets can apply for damages?

Mr. MACCONNELL. I do not know whether there is or not.

Mr. J. W. F. WHITE. I will say that there is.

Mr. MACCONNELL. I will not trust the Legislature to retain that act if there be such a law.

Mr. BIDDLE. That is a good point.

Mr. MACCONNELL. Besides that, that is a special act in relation to Pittsburg. It is not a general law, and the rule ought to be general.

Mr. BIDDLE. That is the point.

Mr. MACCONNELL. I could refer to a great number of cases if I so desired, all bearing upon this point; but I think that this is the most striking and ought to be convincing to every member of the Convention, and I do not believe it necessary for me to occupy time by referring to them. I hope the amendment will prevail.

Mr. J. W. F. WHITE. I only desire to say that what I have indicated as an act of Assembly for the city of Pittsburg has been the law since 1863. In fact it was the law before that, because the circumstance alluded to by my colleague (Mr. MacConnell) originated the act of Assembly providing a mode for ascertaining damages for an injury done to property by the grading or re-grading of streets in the city of Pittsburg, and that has been the law for fifteen or twenty years.

I merely refer to this because this clause is a proper subject for legislation. I was myself in favor of modifying one of the sections of the Bill of Rights, and I think that would have been the right place for this amendment. One word added there would have covered all proper cases, that is: "That no person's property shall be taken, appropriated or damaged for public purposes without just compensation." If the word "damaged" had been added to the Bill of Rights, I believe it would have covered the whole subject, leaving it for the Legislature to carry it out, or if they failed to pass the law, for the courts to enforce it.

Mr. COCHRAN. I merely wish to say that in my judgment, the amendment to the amendment is the best proposition on the subject, and I think it ought to be adopted. I will not enter into any discussion of the question, because it has been already discussed.

Mr. CORBETT. I will vote against this amendment and also against this section. You will perceive that we are doing the same thing that we have done heretofore in adopting other amendments and other sections. We are descending into details, into matters of legislation, and taking from the hands of the Legislature that

which ought to be left there. We leave all our other rights to the Legislature. Why not leave this question of consequential damages? When we undertake to control this question of eminent domain, we go far enough. When we provide that property taken shall be paid for or secured before it is taken, we have, I apprehend, gone as far as we ought to go. With reference to the question of consequential damages, we ought to leave it in the hands of the Legislature, and they ought to control it as they do all other questions of damages. You seek to provide by the amendment that these consequential damages must be secured before the road can do the injury. Suppose the road contends that there is no injury, and the other parties say that there is an injury, what is the result? The only way to test it would be on a bill for an injunction to stop the prosecution of the work. It may be proper that in certain cases there ought to be a remedy for consequential damages. I am not denying that, but the Legislature ought to make provision for instances of that kind, and I apprehend that no such amendment as this ought to be put in the organic law. There is no property taken. The person is divested of no right, more than any other person is injured by a nuisance committed by an individual or by a corporation; why should you descend to these details in this Constitution?

Why should you regulate this subject of damages? You are aware, Mr. President, that cases with reference to damages have occupied the judicial mind for the last century, and in some respects the judicial mind has been unsettled by them. The decisions have been varied, and why not leave the subject to the law-making power. The result of the adoption of this section of the amendment must be to discourage all new enterprises. It is not a stroke at any road now in existence, because I apprehend all these matters are settled as far as the old roads are concerned, unless it may possibly affect some new enterprises which have been lately undertaken; but these are few, if any, and the amendment is really a direct stroke at all new enterprises, and you are only enlarging this matter with reference to consequential damages when it ought to be left to the Legislature.

Gentlemen say that they cannot trust the Legislature. To that I only wish to say, that if you cannot trust them in such matters as this you had better abolish

them altogether. The truth is simply that we are descending to details in this matter by undertaking to regulate this matter of consequential damages. If we make a mistake, there is no remedy. We cannot undo that which we now do. More than that, after you have adopted the section, it is a matter of consideration for the courts, and any rule they adopt will be unbending. They might make some decision entirely different from what we want; and then what is the result?

There is no remedy, and it will remain the law of the land, engrafted in the law by the organic act. There is no change; it is like the laws of the Medes and Persians.

Mr. President, I shall vote against the amendment, and I shall vote against the section in the shape it is.

MR. ANDREW REED. Mr. President: I am opposed to this amendment, but I shall consume very little time upon it, as I expressed my views somewhat when this article was before the committee of the whole. There certainly are cases where consequential damages should be paid. The case referred to, of the church in Pittsburg, and various others, are cases in which any person would at first blush say that certainly damages should be paid; but when we come to provide for them, as in the case of a great many other provisions that we have been providing for, we may do more damage in another direction than the good we shall accomplish in that. For that reason I am opposed to putting this clause in the Constitution, but I am in favor of leaving it to the Legislature, in order that they may from time to time adopt such remedies as experience may prove to be proper.

Now, just see what may be the probable practical result of this section. I here take occasion to say that I have voted for several provisions of this article against my judgment; but among all the sections I think the first one, which gives perfect liberty to all men to build a road where and when they please, is the best one in the whole article. It will prove the best, because where any railroad company does not conduct itself properly or to the interests of the community, others can build another road, and if we perfect that section and make it as free as possible, we can get capital to build roads.

But now suppose after we adopt this section a certain railroad in existence

raises its rates and we think them oppressive, and the people desire to build a new road and they start out and survey their road, look at the obstructions that may be placed in their way. Here will be a man some five or six miles off who will come in and want damages, and although you may say that you owe naught, you must give him security before you can go on; and what under this section will prohibit even the other and existing railroad company from claiming damages? You endeavor to compensate for all damages. Why may not the railroad heretofore chartered say, "We are damaged and we want to be indemnified." I am told that in that case the road is not taken. That is true, but we put in this section that consequential damages must be paid; and are they not subject to damage in consequence of the building of a new railroad?

Mr. J. S. BLACK. It says "private property."

Mr. ANDREW REED. No, not "private," but "all damages." But you decide that there are a great many other cases, and I do think it will prohibit that which I believe to be the best thing in the article, the free exercise of building new railroads. The less obstructions we can put in the way of that, I believe the better. I believe that is better than all the other sections of this article put together, a good free railroad law; and, as I said before, there are cases which ought to be remedied; but if we put in an unbending rule here that they shall be remedied, I am afraid we shall go further than we intend to do.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Dauphin (Mr. Lamberton) to the amendment of the delegate from Lebanon (Mr. Funck.)

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question now recurs on the amendment as amended, which will be read.

The amendment as amended was read as follows:

"Municipal and other corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured, or destroyed by the construction or enlargement of their works, highways, or improvements, which compensation shall be paid or secured before such taking, injury or destruction."

Mr. LEAR. Is this amendment now amendable? There is a word which I would suggest is not quite the word, and that is the word "individuals." We have "individuals" in the first section and "individual" runs through this article in a way that I do not want to go into a section which is a sort of legal section; and I think instead of the word "individuals" we ought to say "natural persons," because "individual" may mean a house, tree, county or city; anything is an individual which is a single object, whether a man, or horse, or a county; and I think the words "natural persons" would be better there, and I make the suggestion.

Mr. LAMBERTON. Mr. President: The language of the substitute which I have offered was thoughtfully considered. The term "individuals" was used designedly. By reference to the first section of this article it will be seen that to "any individual" is granted the right to construct a railroad or a canal. In our present Constitution the word "individual" is used in the same manner as it appears in this amendment. Permit me to call the attention of the Convention to section four of article seven: "The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use," &c. It is a term ordinarily used and well understood as designating natural persons. Its use in the Constitution was proper, I respectfully submit, and was required for cases where, by legislative grants, authority was given to individuals, in the construction of railways or making their improvements, to appropriate the private property of others.

My amendment embodies the principle recognized by a majority of the Convention as proper to form a part of the fundamental law. I think, upon examination, the phraseology will be found fully to cover the cases of peculiar hardship appearing in our books and instanced in the discussion upon this question, in which there was no remedy, because of the duty of the courts to construe, as they have done, the word "taken" in the Constitution. Add to this word "injured," "destroyed," the others which appear in the substitute, and the door will be thrown open for the redress of grievances which heretofore have been remediless. These two words I have taken from the opinion of the Supreme Court in the case of *O'Connor vs. Pittsburg*, referred to by the delegate from

Philadelphia (Mr. Biddle.) By a change in the grade of a street, a heavy loss was entailed upon St. Paul's church in that city, without taking any of its property. The judgment of the court below was in favor of the defendant. It was argued twice in the Supreme Court—the re-argument having been ordered, as stated by Chief Justice Gibson, to discover some way of relief for the plaintiff consistently with law. But none was found, because “the constitutional provision for the case of private property taken for public use, extends not to the case of property injured or destroyed.”

Make these words a part of our law, and compensation will be provided for a class of injuries to private property for which it is clear there is needed a remedy.

The PRESIDENT *pro tem.* The question is on the amendment as amended.

The amendment as amended was agreed to.

The PRESIDENT *pro tem.* The question now is on the section as amended.

The section as amended was agreed to.

The CLERK read the next section of the article as follows:

SECTION 11. No street passenger railway shall be constructed within the limits of any city, borough or township without the consent of its local authorities.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 12. No railroad, canal or other transportation company in existence at the time of the adoption of this article shall have any beneficial legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 13. The existing powers and duties of the Auditor General in regard to railroads, canals and other transportation companies are hereby transferred to the Secretary of Internal Affairs, subject to such regulations and alterations as shall be provided by law; and in addition to the annual reports now required to be made, said secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof; and it shall be his duty, on complaint made against said corporations by any citizen, person or company interested of a violation of law, or any infraction of the rules

of said corporation injurious to the rights or interests of such complainant, to investigate said complaint, and if it shall appear that any violation has taken place he shall proceed either against said corporations or the officers thereof, or both, and if on complaint made, or of his own knowledge, it shall appear that any railroad or part thereof is so insufficiently or carelessly constructed, supported, guarded, protected, or so out of repair, as to imperil life or property, he shall at once notify such delinquent corporation of the same, and specify and direct the remedy to be applied: and it shall be the duty of such corporation to repair, support, make safe from, or remove said cause of peril under such regulation not inconsistent herewith as shall be prescribed by the Legislature to carry this section into full effect.

Mr. J. PRICE WETHERILL. I move to amend by striking out all after the word “law,” on the fourth line. I think it must be apparent to every member of the Convention that the residue of the section is purely pertaining to legislation, and should be left to the Legislature. It seems to me a very strange thing that the Secretary of Internal Affairs shall, on a complaint “made against said corporation by any citizen, person or company, for any infraction of the rules of the company,” proceed “either against the said corporation or the officers thereof.” If the rules, which are purely matters to regulate the affairs of the company themselves, are not violations of law, then I should like to ask what right have we or the Legislature to interfere; and if they are violations of law, then why should this sentence be introduced, “or any infraction of the rules of said corporation.”

Then I think it very hard that in case any employees of a railroad company should break one of the rules, instead of going to the president or officers of the company and informing them and getting the remedy there, men should go to Harrisburg, to one of the State cabinet, and make complaint to him, and, on the making of that complaint, he should be directed to proceed, not against the company itself, but against the company or the officers, as he may see fit! The whole thing seems to be very crude, seems to be prepared without that good care which an article of this sort should receive; and I do hope that the amendment which I have offered will prevail, and that we shall vote down the rest of the section as

extremely crude in itself, and, independent of that, pertaining purely to matters of legislation, and belonging to the Legislature.

Mr. COCHRAN. I hope this amendment will not prevail, and that the section, notwithstanding the criticisms of the gentleman from Philadelphia, will be adopted. The section is not crude and was not introduced here without consideration. It is intended to provide a guard and protection to the public against not only violations of law, but also infractions of the rules of the companies themselves, upon which so often the rights of persons to transport over or have any connection with those roads depend. You can do as much injury to a party very often by infracting the rules of a railroad company as you can by violating any public law.

This section further provides for a public guardianship over and inspections of the condition of these public works, with a view of protecting the persons who travel or transport freight upon them, to see that these roads, upon which so much of life and property is dependent, are kept in a safe condition for the business for which they were intended, that they shall not be allowed to fall into dilapidation, that they shall not be allowed to go into such a condition that they shall be no longer safe for persons to use them in the transaction of their business or in traveling from one point to another.

Sir, this is a public interest; the public welfare is closely identified with it; and there ought to be some guard and protection provided by which the traveling and transporting public shall be as safe and secure as under all the circumstances of the case it is possible to make them; and this is a matter to be provided for by the State in behalf of the community. These institutions are public institutions. They are created for the purpose of providing for the convenience and accommodation of the public, and the government should see to it that they are kept in a condition of safety. That is all that this section provides for, that the rules of the companies and the laws of the Commonwealth and the condition of the railroads shall be so observed and made so secure that there shall be as little danger as in the nature of the case must be encountered in the employment and use of these railroads.

Mr. HOWARD. Mr. President: So far in this article on railroads we have been providing general rules and regulations,

and this section is intended to provide some means by which those rules and regulations may be enforced. The amendment, I understand, is to strike out all after the word "law," in the fourth line. That will strike out the power of the Secretary of Internal Affairs to require special reports on any subject relating to the business of the companies, &c., and also to investigate complaints made by citizens against corporations for a violation of the law or an infraction of the rules of the corporation.

Sir, some such provision as this is absolutely necessary, and why? Because shippers, persons having business with the roads, will submit to wrongs before they will venture the experiment of going into a court of justice and attempting to assert their rights. They submit to them because they are afraid of these companies; and it is absolutely necessary that there should be some State officer who should have authority, representing the people of the Commonwealth, to see to it when complaint is made that the Constitution and the rules of law are observed. That is the reason why this provision was inserted in the Constitution. The lawyers on this floor time and again have known that a sheriff or a prothonotary or some officer of the court was taking illegal fees and violating the law, and yet they could not afford to quarrel with an officer they were having communication with every day; and we understand perfectly well that a shipper, a person having business with railroads, might feel that his rights were violated, and yet he would know that if he went into a law suit with them, they could embarrass him in his business far more than he could recover by any personal controversy.

Then the amendment proposes to strike out the latter part of the section giving this officer some supervision over these railroads so far as concerns the life and safety of the public in their travel. It seems to me that the Commonwealth should have some officer of this description who should have the right, when complaint was made that certain portions of a railway over which thousands of people are being carried perhaps every day or every week were dangerous to life or property, to require that it should be put in a condition of safety.

Now, sir, what is this portion of the section that is proposed to be stricken out? It provides, first, that on the com-

plaint of any citizen that the rules and regulations have been violated, the Secretary of Internal Affairs shall investigate it. If the information is not sufficient, he may require a special report from the company. That power he ought to have. In many instances you cannot get at the facts in any other way than by requiring the special information desired from the company itself. Then the next provision is a provision for the safety of the lives of the traveling community, and it seems to me that that should be provided for as it is in this section, and we ought to adopt it, not simply down to the word "law," because that confers no more authority than is now conferred upon the Auditor General by act of Assembly. We ought to give this officer a greater authority. He should have the power to see to it that the rules we lay down in the Constitution are observed, and if a complaint is made by a citizen, it should be his duty to go into a court of justice and investigate it and see that the Constitution is carried out. Why make a Constitution, why prescribe rules, unless we create an authority to see that they are executed? As I said before, the citizen whose rights are trampled upon is afraid to do it, and I know it. I have had large shippers in my own city tell me so. I have said to them: "Gentlemen, why do you not go into court with these men; you can assert your rights by resorting to the law." Their reply was, "Oh, yes, perhaps \$500 or \$1,000 might be determined in that legal controversy, but we are shipping to the amount of hundreds of thousands of dollars, and they could embarrass us in a hundred ways that would injure us much more, and we are afraid to do it." Now, let us make the great Commonwealth of Pennsylvania stand up and protect her citizens and see that this Constitution is enforced.

MR. S. A. PURVIANCE. If it were possible to have the attention of the Convention for five minutes, I should be very thankful.

Mr. President, we have passed a railroad article thus far embracing eighteen sections, and those sections are all regulating the almighty dollar. This is the only section of the railroad article that relates to the preservation of life, and certainly it ought to claim the attention of this Convention for a few moments. What is it to which objection is now made? It is that the railroads of the State of Pennsylvania shall come under

what is termed, properly speaking, a police regulation, such as exists in other States of this Union. It is but recently since in New Hampshire they elected a board of railroad inspectors, charged with the duty of seeing that railroads were not neglected by the companies having their control. I submit to the Convention whether that is not an important consideration. You find that most of the accidents which occur on your railroads occur on defective bridges where the logs interlap a little over, but have become rotten, and thus life is sacrificed for the want of proper attention. When a railroad receives a charter from the State it is under an implied obligation that the company shall build their road not artificially, not unsafely, but in such a way as not to imperil the lives of those who are to pass over it. Look at some of your railroads—built upon stilts high up in the air, some of them one hundred feet high, on trestle works. I undertake to say that that is not such a building of the road as comes within the obligation which a railroad company enters into when they receive their charter.

Allow me to say to the members of this Convention that on the great Pennsylvania road every man who travels over it is in danger of his life in passing along what is called the Pack-saddle. Why, sir, the track is laid there within a foot or a foot and a half of the verge of a precipice two hundred feet high, down into the Conemaugh river, and if at any time, and that time will not be far distant, a catastrophe should happen there, it will be one such as has never been heard of before. If a rail should break or a wheel should break and a car go over there, there would not be a single vestige of life left. Now, sir, what is this Pennsylvania road doing? Buying roads out in the far Pacific, forming connections thousands of miles distant, and why should they not be compelled to build an inside track at this dangerous point to which I have referred for the purpose of carrying passengers safely over their road? What is this section but putting a police power, the regulation of these roads, in the hands of competent authority for the purpose of making these proper regulations?

Sir, (and this is all I shall say,) after we have devoted weeks and months to the investigation of railroads and made regulations in eighteen sections about the dollar, for the preservation of stocks and dividends, &c., let it be said at least that

this Convention has devoted one single hour to a section which relates to the preservation of human life. I therefore sincerely hope that this section will be carried as it is.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

The amendment was rejected, there being on a division fifteen ayes—less than a majority of a quorum.

The PRESIDENT *pro tem.* The question recurs on the section.

Mr. BIDDLE. Mr. President: I like the principle of this section, but I do not like the shape in which it stands. I think it is too long and goes too much into detail. I am quite willing to vote that these companies shall be placed under the supervision of the Secretary of Internal Affairs, who now takes the place of the Auditor General in this respect; but I do not like to vote for all that part of the section after the seventh line. I have no doubt of the entire accuracy of the statement made by the gentleman from Allegheny with regard to that dangerous part of the road of the Pennsylvania company near the Conemaugh river, and I have no doubt that wherever there is a high bridge there may be a good deal of danger; but I do not like putting those things in the Constitution. I think if we could so modify the section as to place these companies under the general supervision of the Secretary of Internal Affairs we should do all we are called upon to do by giving to a highly respectable officer who is to be elected by the votes of the people at large the control of this subject, and I would prefer leaving it to him entirely to say when and how and where he should move. By placing these companies under that supervision, we place them in effect under the supervision of the law authorities of the Commonwealth, because the moment the Secretary of Internal Affairs has reason to believe that a violation of the law in any particular has taken place or is about taking place he can bring it to the notice of the Attorney General and proceed in the proper way. I prefer leaving the details to the Legislature. I would therefore move to amend the section by inserting after the word "affairs," in the third line, the words "who shall have a general supervision over them," and striking out everything after the word "thereof" in the seventh line. I will read the section as it will stand if thus amended:

"The existing powers and duties of the Auditor General in regard to railroads, canals, and other transportation companies, are hereby transferred to the Secretary of Internal Affairs, who shall have a general supervision over them, subject to such regulations and alterations as shall be provided by law; and in addition to the annual reports now required to be made, said Secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof."

I propose to leave out the remainder of the section, because if you give this officer this supervision he has it in his power to apply the remedy wherever he thinks it fit to be applied.

The PRESIDENT *pro tem.* The question is on the amendment proposed by the delegate from the city (Mr. Biddle.)

Mr. HOWARD. I ask for a division of the question, so that the vote may first be taken on the insertion of the words, "who shall have a general supervision over them," and then the question be taken on striking out the residue of the section afterwards. It will be perfectly sensible to insert those words, and then we can decide the other question of striking out on a separate vote.

Mr. HOWARD. Do I understand the motion to be to strike out and insert?

The PRESIDENT *pro tem.* No, sir; the motion is to amend in the first place by the insertion after the word "affairs," in the third line, of the words "who shall have a general supervision over them." Then the motion further proposes to strike out all after the word "thereof" in the seventh line. Now the delegate from Allegheny (Mr. Howard) asks for a division of the question.

Mr. HARRY WHITE. A motion to strike out and insert is divisible.

The PRESIDENT *pro tem.* It is not a motion to strike out and insert. The motion to insert is a distinct amendment of itself.

Mr. HOWARD. And then the motion to strike out is another distinct amendment.

Mr. HARRY WHITE. By parliamentary law, which is universally recognized, a motion to strike out and insert is divisible; but the Legislature has a special rule on the subject, which limits the parliamentary rule in that regard.

The PRESIDENT *pro tem.* The Chair decides that the amendment is susceptible of the division asked for. The first

question is on inserting the words "who shall have a general supervision over them," after the word "affairs," in the third line.

The amendment was agreed to.

The *PRESIDENT pro tem.* The next division is to strike out all after the word "thereof," in the seventh line, to the end of the section.

Mr. HOWARD and Mr. D. W. PATTERSON called for the yeas and nays, and they were taken with the following result:

Y E A S .

Messrs. Armstrong, Baer, Bannan, Barclay, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Calvin, Carter, Corson, Cronmiller, Curry, Curtin, Edwards, Fell, Fulton, Gibson, Hall, Hay, Horton, Hunsicker, Lamberton, Lawrence, Lear, Lilly, Mann, Mantor, Niles, Patton, Porter, Pugbe, Purman, Simpson, Smith, Wm. H., Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, Harry and Worrell—46.

N A Y S .

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Brown, Campbell, Clark, Cochran, Dallas, De France, Funck, Gilpin, Guthrie, Howard, Landis, MacConnell, McClean, McCulloch, Palmer, G. W., Patterson, T. H. B., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, Henry W., Struthers and Van Reed—27.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Bowman, Carey, Cassidy, Church, Collins, Corbett, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Elliott, Ellis, Ewing, Finney Green, Hanna, Harvey, Hazzard, Hemphill, Heverin, Kaine, Knight, Littleton, Long, MacVeagh, McCamant, McMurray, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Purviance, Jno. N., Read, John R., Ross, Runk, Sharpe, Smith, H. G., Stanton, Stewart, Temple, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—60.

The section as amended was agreed to.

The next section was read as follows:

SECTION 14. Railroad companies shall have the right to connect their railroads by proper connections with the railroads of each other and shall have the right to

pass their cars, either empty or loaded, over each other's railroads free from discrimination in rates or charges, and without delay or hindrance in their movements.

Mr. HOWARD. The substance of section fourteen was incorporated in section one by an amendment.

Mr. COCHRAN. This section, as stated, has been already supplied by an amendment introduced in the first section. I move to amend it by striking out all after the word "section" and inserting the following:

Mr. CAMPBELL. I would suggest to the gentleman that the whole section be voted down, and that then he offer his amendment as a new section.

Mr. COCHRAN. It is immaterial. I withdraw the amendment.

The *PRESIDENT pro tem.* The question is on the fourteenth section.

The section was rejected.

Mr. COCHRAN. Now I offer the following as a new section:

"Every borough or city shall have power to regulate the grade of railroads and the rate of speed of railroad trains within its limits."

I wish to say, in regard to the section, that it was one which was reported by the Committee on Railroads, and met their unanimous approbation. It was voted down in committee of the whole in a flurry, in pretty much the same sort of a flurry that the Convention seems to be in just now.

It is simply a provision in favor of human life and human safety in the passing of railroad trains through thickly populated districts, boroughs and cities; and I hope that the Convention will go so far, at least, as to provide that municipal corporations shall have the right to prevent railroad trains passing through their limits at lightning speed, so the danger of human life and the destruction of property.

Mr. CAMPBELL. I hope that this section will prevail. It affects large cities like Philadelphia. As the chairman of the committee has said, the section met the unanimous approval of the Railroad Committee, and was reported here; but one afternoon, when the Convention was in a hurry to adjourn, they voted down several sections, hardly considering them, and this happened to be one of them. The people of Philadelphia especially want some provision of this kind in order to put a stop to the innumerable railroad

accidents that we read of in the papers. Every day we have an account of some child or man or woman run over by some railroad train passing through the settled portions of the city at a tremendous rate of speed. Now, by placing it within the power of the city authorities to regulate the matter, we shall prevent those accidents that are continually occurring. It will be no injustice to the railroad companies, because the city authorities will not change the grade of a railroad unless it be absolutely necessary for the protection of the people of the vicinity. Whenever the complaints of the people are so great that the city authorities will be compelled to change it, then we shall have the grade changed, and not before, so that the matter will, to a certain extent, regulate itself.

Now, as the gentleman from Pittsburg remarked on the last section, we have been putting in sections in reference to the rights of stockholders on many matters, and we have passed hardly any section in reference to the right of individuals to have their lives protected. This will provide that the lives of citizens in populous districts shall be to a certain extent protected, and therefore as representing in part the city of Philadelphia I hope this section will pass.

Mr. NILES. I have no doubt that the Convention see at a glance that the adoption of the proposed section would put every railroad in the State at the complete mercy of every town-council, and I undertake to say that there could be no greater source of corruption imagined than that every railroad in the State should have to make its peace with the borough authorities. Now, sir, in the little town in which I live, (and railroads are popular there to-day,) a railroad passes at a grade of about sixty feet to the mile. Suppose at some time in the future the council should become opposed to the railroad and they should prescribe by a borough ordinance that the road should pass through the entire corporation limits upon a dead level. It would be an entire impossibility; it never could be done; and I undertake to say that there are not three boroughs or cities in the State to-day where it would be practicable to build a road upon an entire level; and yet if this section is adopted as now before the Convention, this would have to be done. They may not only regulate the speed, but the grade of every railroad in the State. The proposition was voted down

almost unanimously before, and I hope it will be now.

Mr. CAMPBELL. I move an amendment striking out the word "borough" to accommodate some gentlemen.

Mr. HARRY WHITE. I hope this section will prevail. If there is any one thing we have been fighting for it is the right of local self-government, and I trust we shall adhere to it and never surrender it. By virtue of statutory provisions now, this power, so far as regulating the speed of trains and the regulation of the grades of railroads, is referred to the municipal authorities. Those statutes may be repealed, and I for one am in favor of placing the principle in the organic law.

Mr. NILES. I desire to amend the section by striking out the clause about "grade." I do not care anything about the speed. I move to strike out the words "the grade of railroads and."

Mr. CAMPBELL. I rise to a point of order, that this is not an amendment to the amendment. My amendment I offered at the suggestion of some gentleman back of me to strike out the word "borough," so as to make it apply to cities only. The amendment of the gentleman from Tioga is not an amendment to that.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia, (Mr. Campbell,) and the other proposition is out of order at this time. The question is on the amendment of the gentleman from Philadelphia to the amendment of the gentleman from York.

Mr. HOWARD. I hope the delegate from Philadelphia will withdraw that amendment, or the delegates from boroughs will vote against the section.

Mr. COKSON. No, the delegates from boroughs will vote for that amendment and then against the whole section.

Mr. TURRELL. If this section is passed at all, it should be passed just as it is presented. Every municipality ought to have the control of this matter within its limits, and this is in furtherance of protection to human life. It has come to that pass at this day that a few moments or seconds of time in speed to a railroad are considered of more consequence than any man's life. I say if we are to pass this at all, let us have it entire and have the benefit of it. Gentlemen here have said within the last three minutes that they have had their lives jeopardized within the limits of this city, and so it is

all over; and if it is worth anything and is good for one municipality, let us have it for all. I will not multiply words at this late hour.

Mr. BUCKALEW. I am in favor of this amendment striking out "boroughs." I have no objection to the councils and mayors of cities fixing the rate of speed, because they have a thoroughly organized local government that can attend to this subject. It is not so in all the little towns of the interior.

Now, with regard to the speed by which railroads can run in our interior towns, it ought to be regulated by a general law. I would not allow one town-council to fix the rate of one mile, and another the rate of ten. There would be no equality; the thing would fall into utter confusion, and I take it if we put this into the Constitution you cannot pass a general law regulating the speed of railroads in interior towns of the State. Therefore, if the amendment of the gentleman from Philadelphia is agreed to, confining it simply to a few large cities where they have local authorities that can control this subject, I will vote for it; if his amendment is rejected, I shall necessarily vote against the proposition.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Campbell) to the amendment of the delegate from York (Mr. Cochran.)

The amendment to the amendment was rejected, the ayes being twenty-four, less than a majority of a quorum.

Mr. NILES. Now I renew my amendment. I have no objection to letting the rate of speed be regulated; but I move to strike out the words "grade of railroads and."

Mr. CAMPBELL. That is one of the most valuable parts of this section. If you strike out that clause it will prevent the city authorities, say of Philadelphia, from declaring to a railroad company, "You shall change the grade of your track to suit the public convenience of the citizens in certain localities." The amendment would also have another bad effect. We have, for instance, in the city of Philadelphia, a magnificent street, like Broad street. We want to preserve that street forever free from having any railroad upon it—and this is the almost unanimous wish of the people of Philadelphia. There have been attempts made in the Legislature, and one attempt succeeded, to have a railroad track authorized to be

placed upon that street; but the wishes of the people were so decided that the parties who got the bill through actually became frightened, and they did not put the track down. Now, we want to have some provision of this kind, so that the city authorities can regulate the grade of railroads, and can have it within their power to say to all railroad companies: "You shall not run upon Broad street; and if you want to cross Broad street you shall either tunnel under the street or build a bridge over the street," so that we can keep that magnificent thoroughfare forever free from railroads. If this amendment prevails, it will prevent that; it will subject Broad street, and every other street in the city of Philadelphia, to the whims and caprices of the Legislature. I hope the amendment will not prevail, and that we shall adopt the section as it stands.

I only offered the amendment that I did a moment ago, because some gentlemen from the boroughs suggested that they did not wish to have the section applied to boroughs. I myself should like to see it applied all over the State; but now that that has been voted down, I appeal to the gentleman from the boroughs to vote in the section so as to give some protection to the people of the Commonwealth for their lives in passing these railroads in crowded localities.

Mr. LILLY. Mr. President: I hope these words will not be stricken out. If you give authority to municipalities to fix what grade they please, they will make you go down three or four feet below where you ought to go. I am opposed to the whole section. I think this matter ought to be left in the hands of the Legislature to be acted upon by a general railroad law. These details, as I remarked yesterday, we are getting down to too small a place in, and the next thing we shall want to put in will be a time-table to govern the running of the roads. I am opposed to the whole thing because I think it can be better taken care of by general law than by being in this way put into the Constitution. I hope the whole section will be voted down.

Mr. MANN. Mr. President: It does seem to me that this is the wildest proposition which has been submitted. The adoption of this section will convert every train into an accommodation train, and I suppose that is the purpose of it, because if it is adopted it will give the authorities

of every village in the State the compulsory power over the railroads to run at not more than the rate of half a mile an hour through their village. Of course, they will want every train to stop, and we shall have nothing but accommodation trains instead of express trains if this section prevails, for every village will want every train that runs through it to stop. Clearly it will give them the entire control over it, and there will be not only the objection of the gentleman from Columbia, but every conductor will have to have a schedule showing at what rate of speed he may run through every separate village. It will be utterly impossible to run trains under such a section as this except accommodation trains, requiring them to stop at every village through which a train runs.

The point of speed is as objectionable as that of grade, and it will be entirely ruinous to passenger travel in Pennsylvania to adopt such a section as this.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Tioga (Mr. Niles) to the amendment of the gentleman from York (Mr. Cochran.)

The amendment to the amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the amendment of the gentleman from York (Mr. Cochran.)

Mr. CAMPBELL. I call for the yeas and nays.

Mr. COCHRAN. I second the call.

The PRESIDENT *pro tem.* The Clerk will call the yeas and nays on the amendment of the gentleman from York.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Campbell, Cochran, Curtin, Finney, Funk, Gibson, Gilpin, Guthrie, Howard, M'Clellan, M'Culloch, Palmer, G. W., Patterson, T. H. B., Reynolds, Ross, Russell, Smith, Henry W., Smith, Wm. H., Turrell and White, Harry—23.

NAYS.

Messrs. Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Clark, Corson, Cronmiller, Cuyler, Dallas, Edwards, Fell, Fulton, Hall, Horton, Hunsicker, Lamberton, Landis, Law-

rence, Lear, Lilly, MacConnell, Mann, Mantor, Newlin, Niles, Patton, Porter, Pughe, Purman, Purviance, Samuel A., Reed, Andrew, Rooke, Simpson, Struthers, Van Reed, Walker, Wetherill, J. Price and Worrell—48.

So the amendment was rejected.

ABSENT—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Carter, Cassidy, Church, Collins, Corbett, Craig, Curry, Darlington, Davis, DeFrance, Dodd, Dunning, Elliott, Ellis, Ewing, Green, Hanna, Harvey, Hay, Hazzard, Hemphill, Heverin, Kaine, Knight, Littleton, Long, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Patterson, D. W., Purviance, John N., Read, John R., Runk, Sharpe, Smith, H. G., Stanton, Stewart, Temple, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—62.

Mr. NEWLIN. I offer the following amendment as a new section:

SECTION.—No transportation company nor any officer or employee thereof shall prohibit the sale or carriage of any news, paper or other publication upon the line of said company, unless the same shall be contrary to public morals.

Mr. President, I suppose the objection will be made to this proposed section that it is legislative. I suppose that that objection will be urged to this section.

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

Mr. NEWLIN. I am always very happy to answer the gentleman from Carbon; he very seldom speaks. [Laughter.]

Mr. LILLY. I want to know if he is interested in the *Inquirer*.

Mr. NEWLIN. No, sir, I believe I am not interested. I do not even subscribe to the paper and very seldom read it. I hope the gentleman is satisfied.

This proposition, I suppose, will be opposed on the ground that it is legislative. In answer to that, I have two things to say. In the first place, this proposition has been before the Legislature and has been defeated for reasons that will be obvious to every member. Again, various other propositions in this article are quite as liable to this objection as the one now pending. There are a number of instances where railroad companies have not simply prohibited the sale of particular newspapers along their line, but have failed to allow facilities for trans-

porting the papers to the different towns, boroughs and cities along the line, by reason of opposition on the part of those newspapers to the action of the corporation. Why, sir, only recently in the State of New York, *Harper's Weekly* was in this manner driven off a principal road, and on another road the *New York Times* was prohibited being either sold or transported.

I think for these reasons that the section I have proposed ought to be adopted.

Mr. DALLAS. I offer an amendment to the amendment, to come in at the end of it. The section provides for a meritorious class, our newsboys, and I propose to add:

"And that all bootblacks shall be admitted to the depots without distinction of race or color." [Laughter.]

The PRESIDENT *pro tem.* I suppose that is hardly offered seriously.

Mr. DALLAS. I withdraw it.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Newlin.)

The amendment was rejected.

REPORTERS' ACCOUNTS.

Mr. HAY. I desire to make a report which I request leave to present at this

time. The Convention will probably soon adjourn; as this is a matter which should be attended to before we adjourn, I ask leave to present a report from the Committee on Accounts and Expenditures.

Leave was granted and the report submitted, as follows:

The Committee on Accounts and Expenditures respectfully report the following resolution:

Resolved, That a warrant be drawn in favor of D. F. Murphy, Official Reporter of the Convention, on account of his services as such Reporter, for the sum of \$3,000, to be accounted for by him in the settlement of his accounts.

The resolution was read twice and agreed to.

RAILROADS AND CANALS.

Mr. COCHRAN. I now move that the article on railroads and canals be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

The PRESIDENT *pro tem.* The Convention having completed the second reading and consideration of the article on railroads and canals, the Convention stands adjourned until the sixteenth day of September, at ten o'clock A. M.

ONE HUNDRED AND FORTY-SECOND DAY.

TUESDAY, *September 16, 1873.*

The Convention met at ten o'clock A.M., pursuant to adjournment, Hon. John H. Walker, President *pro tempore*, in the chair.

PRAYER.

The following prayer was offered by Rev. J. W. Curry:

Almighty God, our Heavenly Father, we desire to come before Thee this morning with reverence and humility. We thank Thee for Thy mercies and protecting care over us during our brief vacation. We rejoice that through Thy goodness our health and lives have been preserved. Truly we can say, "goodness and mercy have followed us all the days of our lives." O, Lord, on our re-assembling in this Hall this morning, one of our number is missing. He who presided over the deliberations of this Convention with so much dignity and marked ability; he who was recognized among his fellow citizens as a faithful defender of truth and justice, and the acknowledged leader of the legal profession in this city; he whose voice was heard during the morning prayers in this Hall, to say "Amen, amen," has passed away, ripe in years. Truly a great man has died; his place among us is vacant. We shall never hear his voice in words of wisdom again. His eyes are closed in death. We followed his remains in sorrow to the grave. Yet, Lord, we rejoice, because Jesus was laid in the grave, and by the power of His divinity, rose again, and robbed death of its sting, and the grave of its victory. We praise Thee, O Father, for the precious and comforting words of Thine only Son, Jesus Christ, who said, "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." We ask Thy blessing, O God, upon the children of our departed brother. Help them to have living faith in Christ the Redeemer of the world. We invoke Thy blessing upon the members of this Convention, its

clerks, officers, reporters and attachees. O God, for the sake of Thy Son, who suffered, the just for the unjust, save us from sin in this world and from eternal death in the world to come, and we will praise Thee for ever and ever, world without end, amen.

WITHDRAWAL OF JUDGE WOODWARD'S RESIGNATION.

Mr. KAINE. I move that the roll be called.

Mr. WOODWARD. I rise to a personal explanation, which I think should precede the motion of the gentleman from Fayette. On the second of July I tendered my resignation as a member of this body, in perfect good faith and with great respect for the body, and in pursuance of notice previously given. I understand that the body, in the same spirit, declined to accept my resignation, and laid it on the table. I am now returned to Philadelphia, which I left immediately after resigning, willing, but not anxious, to resume my seat and duties in this body if it is the pleasure of this body that I should perform those duties. Therefore I say if it be the pleasure of the body that I should withdraw my resignation, it may be considered as withdrawn. ["Yes!" "Yes!"]

The PRESIDENT *pro tem.* put the question, and leave was unanimously given to withdraw the resignation.

MEMBERS PRESENT.

The PRESIDENT *pro tem.* The delegate from Fayette (Mr. Kaine) now moves that the roll be called.

The motion was agreed to, and the roll being called by the Clerk, ninety-two delegates answered to their names.

ELECTION OF PRESIDENT.

Mr. WOODWARD. Mr. President: At the instance of several gentlemen around me, I rise to move that the Convention proceed to the election of a permanent President.

Mr. DARLINGTON and OTHERS seconded the motion.

The PRESIDENT *pro tem.* It is moved and seconded that the Convention now

proceed to the election of a permanent President. That motion is before the Convention.

The motion was agreed to.

The PRESIDENT *pro tem.* The Chair, inasmuch as his name has been associated with the permanent Presidency, deems it his duty, in delicacy at all events, to retire and let the Clerk preside during the election. If that course is not considered improper it will be pursued. ["Yes." "Yes."]

Mr. STANTON. Mr. President: Would it not be better to have the death of our President officially announced before doing that?

Mr. BROOMALL and OTHERS. Not until afterwards.

The PRESIDENT *pro tem.* The Convention is organized. The fact of the death of our late President is well known, and the Convention is now, on motion made and agreed to, about to proceed to the election of a permanent President.

Mr. HAZZARD. I suggest, Mr. President, that some member be called to the chair temporarily.

The President *pro tem.* vacated the chair.

Mr. WOODWARD. I will move, (and ask that the Secretary put the motion,) if gentlemen consider it a proper motion, that the Hon. John H. Walker be elected by acclamation President of the Convention.

SEVERAL DELEGATES seconded the motion.

The CHIEF CLERK, (D. L. Imbrie, Esq.) It is moved and seconded that the Hon. John H. Walker be elected President of this Convention. [Putting the question.] The motion is unanimously agreed to, and Mr. Walker will take the chair as permanent President of the Convention.

Mr. WALKER, on taking the chair as President, said:

Fellow delegates: I tender you my sincere thanks for the honor you have conferred on me in placing me in the position occupied by our deceased friend, the Hon. Wm. M. Meredith. I do not expect to be able to discharge the duties of the Chair as satisfactorily as he did, but I will endeavor to the best of my ability to do it with impartiality and with all the intelligence I am possessed of.

DEATH OF MR. MEREDITH.

Mr. CAREY. Mr. President: As senior member of the Philadelphia delegation, as well as of the Convention itself, it has become, Mr. President, my duty to ask

my fellow members to suspend for a few minutes procedure with the work committed to their care, and to direct it to a solemn event which an act of divine Providence has commended to our consideration.

Since last we parted, but few weeks since, the painful anticipations of members have been realized in the death of our distinguished President, the Hon. William M. Meredith, who expired at his residence in this city, on the 17th day of August, in the seventy-fourth year of his age.

Mr. Meredith was a native of this city, and throughout his long life a resident therein, except when absent in the discharge of public duties. His father was a highly accomplished gentleman of great purity of character, occupying a distinguished place at the Philadelphia bar. His childhood was blest by the genial influences of association with a mother eminent for her mental, moral and social qualities, and his instruction, begun and long continued at home, was subsequently enlarged by collegiate education, to be perfected finally, as it was, by special studies and professional and official occupation. His attainments, though large, were less conspicuous than those of others not his equals, simply for the reason that as a consequence of early home discipline they had been thoroughly digested, and had become indivisible and inseparable portions of his mental character. His thoughts and their expression were tinged with the best sentiments of ancient and modern authors, yet were these latter never ostentatiously displayed.

Mr. Meredith's success in the profession of the law, and especially as a barrister, early attracted the attention of those whose party relations and party influence led them to select such as seemed likely to become candidates for the popular suffrage, and he soon therefore entered the Legislature of the State, almost at once achieving there a distinction closely correspondent with his rising influence at the bar. For many years he was a member of our city legislature and president of the select council. His parliamentary knowledge, and his civic devotion, there gave dignity to the place he occupied, and secured an amount of respect which, as there is too good reason for regretting, such positions do not everywhere command.

Mr. Meredith was elected a member of the Convention to which, in 1838, was re-

ferred for amendment the Constitution of the State. The records of the proceedings of that body, and the reminiscences of his few remaining colleagues, prove him to have been an active and influential member. Throughout its sittings he distinguished himself generally by an earnest advocacy of propositions tending, as he thought, to promotion of the public welfare, but most especially by his logical discussion of questions concerning that judiciary with whose interests his professional education and pursuits so closely identified him; and for the maintenance of whose permanent dignity he was always a zealous and able advocate.

In that Convention, as in the Legislature of the State, Mr. Meredith's eloquence was marked by a directness which left on the minds of his hearers no doubt of either his inclination or his object. He was grave, argumentative and convincing in the larger questions under discussion; interesting and pleasing in debates of lesser moment; and, though avoiding all aggression, was, when provoked, pungent in his satire and cutting in his rebuke. Few men in that body were so remarkable for their readiness as debaters, or their promptitude in repartee.

Mr. Meredith was called to the national councils, and, as Secretary of the Treasury in the short administration of President Taylor, there distinguished himself by his comprehensive views of the duties of his place and of the great interests of the people he represented.

It was at a trying moment in the experience of this Commonwealth that he subsequently accepted the office of Attorney General of the State, doing this at a personal and professional inconvenience which gave to his labors the merit of sound patriotism and great self-sacrifice. How serious was that sacrifice can scarcely be appreciated by any but those close friends with whom he consulted at the moment when acceptance was urged upon him by my friend and colleague, Governor Curtin, then Chief of the State. Most reluctantly was it accorded, the impression being full upon his mind that in his then physical condition compliance with the Governor's demand, for demand it really was, must be followed by speedy death. How important it had been that he should comply, was proved by the fact that from the hour of its becoming known that he had assumed the legal advisership of the Executive, the storm of vilification ceased. All knew that if there

had been any truth in the charges which before had been daily made, the Governor would not have dared to offer him the place. All felt that with our departed friend in office, they had a guarantee not only that there had been honesty in the past, but that there was to be honesty in the future. It is rare to find an individual exercising over the public mind so large an amount of influence as was then exhibited; rare to find a man in public life whose duties are so thoroughly performed, and with a success so perfect.

When the President was seeking for men of might, of personal, professional, and political distinction, to assist in the councils at Geneva touching questions then at issue between Great Britain and the United States, he almost necessarily selected Mr. Meredith. There were, however, reasons sufficient for warranting the recipient of the invitation in declining the proffered honor, and in thus avoiding the exposure and the labor which acceptance would necessarily have caused him.

These things had passed into history when the election of Mr. Meredith as President of this body, by an unanimous vote, gave expression to the perfect confidence had in his parliamentary skill and in his entire mastery of almost all subjects likely to be discussed, as well as in the soundness of his patriotism and the purity of his life; a confidence shared by all who knew him. It was a choice sanctioned and applauded by the whole people of our Commonwealth.

How fully our late President comprehended the duties of his place, and how ably they were discharged, it is not necessary for me to state. I stand in the presence of those who witnessed, and will testify to, the promptness and impartiality of his judgment; and who, if hesitating fully to assent to his decisions, never for a moment doubted his sincerity nor long withheld concurrence in his views.

The members of this Convention, when its labors shall have closed, will take to their homes a grateful recollection of their deceased President, and will do justice to the wisdom, integrity, and impartiality of his administration. They will have a melancholy gratification in associating his memory with the recollection of the dignity and usefulness of the body of which they had been members, and of William M. Meredith, its head.

The resolutions which I am about to offer, though partaking of the formalities

of such an occasion, are intended as an expression of the profound respect with which this body recognizes the sterling worth of Mr. Meredith as a man, a citizen, and a statesman; and especially are they to serve as testimony of a full appreciation of his great services as President of this Convention, and of the sympathy of its members with the bereaved family, and with a community which loses so much in the death of so eminent and so excellent a man.

I offer, Mr. President, the following resolutions:

Resolved, That this Convention has heard with profound regret the formal annunciation of the death of its President, the Hon. William M. Meredith, to whose eminent abilities and hearty devotion to the discharge of the duties of his office testimony is hereby borne.

Resolved, That this Convention, while expressing regret at the loss which it has itself incurred, feels it due to itself and to others to offer the expression of its deep sympathy to the bereaved family of Mr. Meredith, and to the community of which he had so long been a valued and honored member.

Resolved, That the President be and he hereby is requested to communicate these resolutions, properly attested by the officers of the Convention, to the family of our deceased President.

Resolved, That a committee of — be appointed to take order for the preparation of a memorial of the deceased.

Resolved, That this Convention, as a further token of respect for its late President, will refrain this day from any further labor, and will adjourn till to-morrow at — o'clock.

Mr. DARLINGTON. Mr. President: I cannot permit this occasion to pass without adding a few words to what has been already so appropriately said. Although I knew Mr. Meredith for some years previously, yet my acquaintance with him did not commence until we met at Harrisburg as members of the Constitutional Convention of 1837. That body contained many of the most distinguished men of the Commonwealth, some of whom were advanced in life, and had served many years as representatives in Congress, in the Legislature, and in other places of public trust. He was then in the full vigor of manhood, possessing a mind naturally strong, highly cultivated and stored with varied learning, and was gifted with powers of oratory of no common

order. He at once took rank as one of the ablest debaters of that Convention, and when he addressed the body he commanded its earnest and undivided attention. During the whole period of its sessions—which extended over many months—he was constant in his attendance and earnest in the discharge of his duties. His views were well known to be highly conservative. Strongly attached to the Constitution of 1789, and believing it, as we have heard him express in this Convention, to be the best frame of government possessed by any of the States—we were not surprised to learn that he doubted the wisdom of the proposed changes and innovations. When called, as he sometimes was, in the temporary absence of the President, to the chair, he displayed the same aptitude and readiness in the discharge of its duties as we have all seen him exhibit while presiding over this body.

My intercourse with him ever since our acquaintance began has been of the most agreeable character. We have been frequently brought together professionally, sometimes as antagonists, oftener as allies; and I am yet to hear the first intimation of word or deed on his part inconsistent with the highest standard of professional and personal honor.

He was one of the most genial companions I ever knew. His conversation, full of instruction, was at the same time free and easy, and interspersed with anecdote and pleasant remark which delighted all his listeners.

I make no reference to his public services in the Legislature, as Secretary of the Treasury of the United States, or as Attorney General of this Commonwealth. His memorial will doubtless be written, and will be the proper repository of the principal events of his public life.

Upon his election as a delegate to this Convention, almost every one instinctively looked to him as the proper person to preside over its deliberations. His unanimous choice was a deserved compliment to his high character and distinguished ability, and the manner in which he discharged his duty is alike honorable to him and satisfactory to us all.

During his illness, which was somewhat protracted, I frequently called to see him, and generally found him cheerful, and hopeful of recovery. He attributed his ill-health to over-work in this body, and naturally supposed that rest would restore him. On my last visit, two days after our

adjournment in July, it was impossible not to see that his strength was failing, and I had the greatest apprehension that we should never see him here again.

We are now assembled to mourn his loss, and pay appropriate tribute to his memory. His death is an admonition to us all that the sands of life are fast running out. He was less than six years my senior, and there are some older, and many younger here than I; yet by the wise provision of Providence we know not who next shall follow. Our duty is so to live as to be always ready.

Mr. BIDDLE. Mr. President: It is not because I expect to add anything to the comprehensive and eloquent eulogy that has been pronounced by the mover of the resolutions upon our deceased friend that I rise to speak; it is because I feel it a necessity to say something on this occasion of one whom I have known, whom I have honored, whom I have revered from early boyhood.

I may be permitted to say in the outset of these remarks, that I was allowed the great privilege of close personal intercourse with the distinguished deceased, that free interchange of mind with mind which enables us truly to form a just estimate of the character of a friend.

In a body like this, composed so largely of members of the same profession, it is not perhaps inappropriate to refer to the professional life of the distinguished dead. Indeed, so much of that professional life was, as it were, a public life, because in no question of great public interest was Mr. Meredith, for many, very many years of his active life at the bar absent from one side or the other, that in speaking of his professional life, we, in a measure, touch upon that other life which has been so well referred to in the resolutions and in the speech introductory of them.

Mr. Meredith, born the son of an eminent practitioner of the law, was so well educated in and imbued with the principles of jurisprudence, that at an early age he stepped forth as the thoroughly trained lawyer, the ready advocate, equal to any forensic encounter; yet his advance was a slow one, and his success but tardy, for he neither had, nor affected, the popular arts by which practice at the bar is early secured. He could not solicit business, business must solicit him; not because he thought it wrong to solicit business, but because he disdained it. Success did ultimately come, as we all well know, and first in a cause which involved not only

the interests of his native city, but, as it were, the interests of every citizen in this Commonwealth. The exhibition in this case of his great legal acumen, his profound knowledge of the early history of the Commonwealth, his wonderful mastery of all the weapons of advocacy, placed him at once in the front ranks of a profession then led by a Binney, a Sergeant, and a Chauncey. After the decision of the case I refer to, which occurred in the year 1837, a case involving the right of the people of this Commonwealth to the full enjoyment of one of the public squares of this city, his success was assured and his advance rapid; for I feel entirely safe in saying that until his call by President Taylor to the Secretaryship of the Treasury, no important cause was argued in the State in which he was not retained on one side or on the other.

How he conducted the business entrusted to his hands very many gentlemen on the floor of this House well know, and it requires no statement from me to call to recollection the brilliant and successful manner in which his abilities were displayed in the service of every client by whom he was employed.

In the office of Attorney General, which he filled at a comparatively recent date, his term of six years was marked by a singular devotion to the interests of the Commonwealth. It would be rendering but poor justice to his character to say that no temptation could ever for a moment induce him to swerve from the strict line of duty. It is not in that way that I wish to speak of him; but I desire to refer to his zeal, his devotion to the cause of the Commonwealth, his thorough personal identification with the interests of the State; all of which qualities were so eminently conspicuous as to impress, in a very marked manner, those who were brought into necessary opposition with him by the nature of their business. He retired from that office leaving upon it, in a striking degree, the impress of his great abilities and his high character.

In concluding this very slight sketch of his professional career, I feel that I am not overstepping the bounds of just eulogium if I apply to him what the master of Roman oratory said of a great contemporary when he characterized him as the most eloquent of the lawyers, the most lawyer-like in his eloquence, *eloquentissimus jurisperitorum, jurisperitissimus eloquentium*.

But here, in this Convention so lately presided over by him, it seems more appropriate to touch upon his public life, upon that side of his life which was dedicated to the public service, to public affairs. I wish to say a few words in regard to his political character.

Mr. Meredith was born a Federalist. He came into the world in perhaps the most exciting period of the politics of this country, certainly in as exciting a period as ever existed. He was born in the year 1799, in the presidency of the elder Adams; and intellectually precocious, he entered as a mere boy warmly and sympathetically into the political feelings and the political excitements of that day. His attachment to his own party leaders, or rather to the leaders of the party in which he was born and to which he adhered so long as it was a party, partook of the ardor of his temperament; yet it was not to the principles of the party as such, so much as to the men who led it, that he gave his thorough adhesion. He was a Federalist, without being strongly attached to any of the peculiar tenets of that most respectable party. He certainly was not what might be called a concentrationalist, a consolidationist. He was rather the reverse, rather a States-rights man. He was not a liberal constructionist; he was rigid in his views of the explication of the great charter which lies at the foundation of our government. It was to the Federal party as he conceived it ought to be, rather than to the principles which the existing Federal party enunciated, that he gave his full concurrence. While he worshipped the great men of the party, he never could have gone along thoroughly with all their political peculiarities. When he reached manhood he was undoubtedly strongly imbued with many of their views; but with his advent into active life that party had practically ceased to exist, for Mr. Meredith attained his majority just about the time of the second presidency of Mr. Monroe, when, as we all know, party opposition lay for the moment dormant, if not dead.

Mr. Meredith was formed to be a debater, and as has been very justly said by my distinguished colleague from Philadelphia, (Mr. Carey,) his fellow-citizens were not slow in discovering his great powers in that direction, and at least a decade of years before he had become distinguished at the bar, by the unsolicited suffrages of the voters of his native city he was elected to the Legisla-

ture of the Commonwealth, where he soon became eminent.

Let me say a few words here about what I believe to have been some of his characteristics as a debater. He certainly was in the very foremost ranks in this respect, if not the very first. I disparage no man when I say this. Strong, vigorous good sense, clothed in nervous language, rising as the subject rose to fervor, and often to passion; directness of purpose, singling out the strong points of attack and throwing overboard the little ones; wonderful power of repartee, biting sarcasm where he chose to resort to it, were only some of the parliamentary weapons which he had at ready command. His masterly treatment of any great political question has again and again impressed the listeners with admiration. How he seized, with instinctive rapidity, the weak points of his adversary; how cogently he drove home his own strong blows with sledge-hammer force, many gentlemen here have again and again witnessed with delight, and almost with approval even when they differed from the views of the speaker.

It has been said here, and truly said, there was nothing aggressive in his nature; but while he was not aggressive he held his honor in a wary distance, which made it dangerous to offer the slightest offence to it, and woe betide the man who incautiously or presumingly thought that in the way of attack he might safely measure his sword with Mr. Meredith's; his defeat was a foregone conclusion.

Mr. Meredith, without the most indirect solicitation on his part or even on the part of his friends, after presiding long and well over the local legislature of this city, and after conducting for a quarter of a century or so the leading business at the bar here, was called by President Taylor to one of the most important positions in his gift. That President did not live long enough (I think but little over a year) to enable him to develop anything like a fixed or settled policy, and therefore Mr. Meredith's great abilities were scarcely tested in the Treasury Department; but his truthness, his integrity of purpose, were shown there as everywhere else. His disdain of mere party intrigues, of mere partisanship, were conspicuous here, as they always had been throughout his whole life. He was too little, probably, of a politician to be very successful in public life. He dwelt too little upon that which is usually uppermost in the thoughts and

calculations of the mere politician, to cope very successfully with those who walked nearer the earth; but had he been permitted to hold the position to which he was called for its ordinary period, undoubtedly he would have greatly distinguished himself.

How he conducted himself as Attorney General of this great Commonwealth, to which post he was invited by our friend and colleague, Governor Curtin, has been so well spoken of by my colleague from Philadelphia that I am indisposed to add a single word upon that portion of his public life.

Every man in Pennsylvania, every man in the country, felt a sincere pleasure when it was announced that he was to represent the United States as one of its counsel before the tribunal at Geneva. While the fact that he did not finally accept this position was not unfortunate for himself, it was certainly so, in my estimation, for his country. Had he been present as one of its leading counsel, I believe, from my estimate of his character, that this country would have been spared the humiliation of advancing pretensions not only destitute of justice but even of the cover of plausibility, and which the good sense of the whole people, the moment they were announced, unhesitatingly rejected. Nor would our government have been placed in the dilemma from which it was, in part, curiously enough extricated by the pronouncement in advance, by the tribunal which might have been ultimately called upon to adjudicate them, of an adverse opinion as to claims which were withdrawn from its consideration without formal presentation and argument. Mr. Meredith would have been a party to no such procedure.

But the crowning event of his life, in my opinion, was the position to which he was called in this Convention, not only by its unanimous suffrage, but by the unanimous heartfelt selection of every man here. No mere party man, no man who had erected as the standard by which he was to govern his political life mere adherence to party, could have received this choice in such a way. It was because every one felt and knew that he never could and never did "give up to party what was meant for mankind," that Mr. Meredith stood in the estimation of this body not only as its foremost man, but as the man who was entitled to receive the unsolicited vote of every delegate present. No doubt, in the ordinary accepta-

tion of the term, he was a party man so far as to adhere to the general policy marked out by his party, subordinating to the success of this policy any petty or private differences of opinion on minor points; no doubt he was a party man to the extent of sinking unselfishly his real or supposed claims when the interests of his party seemed to demand it. But he never pre-pledged himself to follow the dictates of party or party leaders, without regard to whether in his judgment they were right or wrong. Much less would he have ever bound himself in advance, under the specious plea of adherence to party, to accept unhesitatingly mere party nominations for all offices, judicial and others, as they were cast before him by party dictators. Mr. Meredith was not that man; and the best authority entitles me to say that more than once he overlooked in this regard party considerations as altogether inferior to what he conceived to be his duty to himself and to his country.

Mr. Meredith's character was such, his public and his private character was so simple, so direct, so free from all affectation, he was so accessible in intercourse, that we scarcely knew how great a man he was until we found ourselves deprived of him. And this community in which he lived, perhaps a little cold in its external manifestations, a little too much averse to anything like demonstrativeness, only felt silently the worth and the value of the man who was dwelling in its midst. But when Philadelphia, with the whole country, was aroused by the intelligence of his decease to a full sense of her loss, she then keenly perceived and warmly and strongly expressed her sense of the bereavement. She has felt and she will long continue to feel, in the death of this distinguished man, her very great loss; and she will long continue to search for, without finding, another fit to replace him.

Mr. DALLAS. Mr. President: Mr. Meredith's brilliant intellect and extensive attainments were never employed ungenerously in his association with those less gifted, and to the close of his life he was always kindly considerate of younger men, and to the end retained, in his intercourse with them, an engaging, cheerful courtesy. This thought—impressed upon my heart by grateful remembrance of kindness to myself—prompts and emboldens me now to offer an humble tribute to his memory. Not that I can add anything to that which has already been so

well said of him, nor that anything which can be said could adequately depict the loss occasioned by his death, and our deep appreciation of the extent of that loss to us. But, sir, it is not fitting that this hour should be allowed to pass without special though brief mention of the warm affection with which Mr. Meredith was regarded by his junior associates, here and elsewhere, nor without at least a hurried recognition of that which I conceive to be the great lesson of his life for them.

It is, Mr. President, a melancholy truth and a sad misfortune to the State, that her young men seldom interest themselves in public affairs unless directly induced to do so by desire for public office, and hence mere seekers of place have, in great measure, become our substitutes for statesmen in the counsels of the Commonwealth, and venal demagogues usurp the honors due to patriots. Mr. Meredith was a statesman and a patriot in the highest sense, but he never sought for office. His time, from his youth upward, was better spent in the faithful prosecution of those studies which made him the foremost lawyer of his time, and so thoroughly fitted him for the performance of public labor that it became necessary, upon more than one occasion, to call upon him to serve the people in positions which, though beneath his deserts, he accepted in obedience to his duty to his native State. But, sir,

"Whom can honors, repute or trust,
Content or pleasure, but the good and just."

Mr. Meredith was, indeed, a thorough lawyer, an eloquent advocate, an accomplished scholar and a profound statesman, but a sense of honor the most keen, and a purity of purpose which rendered all other considerations subservient to his own conception of right, made him even more than all of these—a noble man. "Take him for all in all, we shall not look upon his like again!" And the teaching of his life, to which I have referred, is this: That better in the end than power or place, and all that power or place e'er gave, is the abiding glory of a life well spent.

Mr. President, men will always differ in opinion upon public questions, and many of us have not concurred in those views which constituted Mr. Meredith's political faith; but it has come to be of paramount importance that public men—be their opinions what they may—should be

pure beyond suspicion of ill doing, and hereafter that man's memory will be dearest to the State who, like Mr. Meredith, shall leave upon the pages of its history the inspiring record of an unblemished character and a spotless life. Let those of us who are beginning in this Convention as he commenced in that of nearly forty years ago, take this lesson to our hearts, and

"Let us then be up and doing,
With a heart for any fate,
Still achieving, still pursuing,
Learn to labor and to wait."

Mr. LANDIS. It must ever be a source of regret that the name of William M. Meredith cannot be appended to the instrument which this Convention is about to lay before a great Commonwealth for its approval. His name was subscribed to the Constitution of 1838, and as under that fundamental enactment the people have advanced to a degree of civilization and prosperity commensurate with the greatness of a nationality or an empire, it would have been well if the State could have had the stamp of his personal approval upon the paper which reforms the successful labor of 1838, in which he was so illustrious a workman. But whilst we have had the benefit of his counsel and presidency for more than half the session, it has pleased God, who gave him his great mind, to call him from his labors. And as we approach the conclusion of our deliberations, we can but pause in our task to deplore the loss which both we and the people have sustained, and complete, unaided by his great wisdom and experience, the high duties imposed upon us.

I never knew Mr. Meredith till I came into this Convention, and, though familiar with his fame, I met him when far on the downward walk in life—when his name was rich with his life's experience—when replete with the honor given him by the admiration of his fellow-citizens—when, as linking the present with the earlier days of the Commonwealth and its distinguished sons, he was about to leave the theatre of action—and when, in the fulness of years, life and usefulness were about to depart together; for soon

"The hand of the reaper
Took the ears that were hoary."

I shall not attempt to delineate the character of Mr. Meredith. Others have to-day more appropriately and fitly done so, and posterity will vindicate the justice of their eulogium. Indeed he needs no monument from us, his own deeds and his

own qualities are the stones in the shaft which will perpetuate his name. No man can, as he, appear among his fellow-men and labor with the fervor of his mind and the affluence of his intellectual resources, guided by his zeal, his probity of purpose and high and noble aim through all the years of his private and public activity, without stamping the good impress of his gifts and his qualities upon his race and generation—an impress that must outlive the day that witnessed the giving back the inanimate clay to the maternal earth from which it sprang.

It was pleasant in meeting Mr. Meredith to recall the triumphs of his earlier years; that he was the cotemporary of Sergeant, Hopkinson, Ingersoll and other luminaries of the past; his encounters with the rare intellects of his time; his reputation as among the first of American lawyers; and when in the vigor of his manhood, what must have been his tall and manly person—or is it too much to say—his majestic presence! But it was sad to see only too plainly in the attenuated form and tottering step, as he came daily to the discharge of his last duties, that life was ebbing, and the frail hulk must soon be stranded.

The life of Mr. Meredith we are told was a busy one. He possessed a vast store of learning, upon which his great mind made ample demands, and utilized for every purpose to which his attention and his energies were directed. This body has often witnessed the flashes of his wit, and in social intercourse his trenchant repartee and apposite allusion gave evidence to his brethren of later day acquaintance of what must have been in earlier years the attractive power of his companionship, or the quiver of his lighter weapons for his adversaries. With these and the many other recollections that cluster around the name of Mr. Meredith, I shall claim for myself one of the pleasantest of my memories, my meeting and acquaintance with the man whose death we here to-day lament. And whilst I here utter this brief and feeble tribute to his memory, I know I can add nothing to his fame. I cannot hope by any word of mine to exalt the high attributes of his character, but as one of the latest of his acquaintances and fellow-laborers, I may unobtrusively approach and lay a simple garland upon his grave.

Mr. Meredith is dead. But hope we are told perished not with the body. He found in the gospel of the Nazarene a faith

which bore his hope, and that faith and that hope outlast the fleeting breath. As we gather good from his life, so let us gather counsel from his dying. Thrice have we here mourned a dead brother; thrice let us be warned of our own responsibilities, and of that allegiance which we owe to Him who came into our midst, and took from the field of their latest usefulness Hopkins, M'Allister and Meredith; and in the ecstatic joy of a perfect hope, let us remember those "brighter worlds" to which they "led the way."

MR. STANTON. Mr. President: The 17th of August, 1873, will long be remembered by the citizens of Philadelphia as the dark day on which passed from their midst that most eminent scholar, jurist and statesman, William Morris Meredith.

When a great man dies a nation mourns, and the history of our country supplies numerous instances where the halls of legislation, national and State, have been draped in mourning for those who were honored and beloved by the people. They died and were buried with their fathers, but their names are engraved in our hearts, and their illustrious deeds and exalted virtues can never be lost so long as intelligence, patriotism and liberty shall have an existence.

To-day we mourn one with whom we were but recently associated; one who presided over our deliberations with rare ability and dignity. During our recess he passed away no more to meet with us in this Hall where often we have listened with such intense interest to his manly utterances and wise counsels. The gloom which Mr. Meredith's death cast over this city is not dispelled, but hangs about it still like a funeral pall. Philadelphia acknowledged him as one of her most eminent sons; eminent alike as a lawyer, a statesman, a citizen and a proper peer of her Sergeants, her Ingersolls, her Whartons, her Binneys and a long line of men who have made illustrious and famous her bench and bar.

Standing here this morning, we are especially reminded of our departed brother, and realize that each word

"Which he hath uttered; every varying tone, And even each change of feature, are consigned As gems to memory's casket."

In his death the bar has lost a luminary of the first magnitude; society an amiable gentleman; the church a shining light; literature and art a devotee; the State a pillar of strength, and the repub-

lic one of its most faithful and heroic champions. Few men combined a greater amount of talent in the respective fields of law, art or science than did Mr. Meredith. In politics he was firm and consistent, upholding all the fundamental principles of our government and constantly keeping in view the great truth that religion and virtue are necessary to the success and perpetuity of our free institutions. Mr. Meredith was not ambitious for popular honors, in the sense of the term obtaining in these times. He was not a man to bend to the dictation of corrupt political factions. Independent in spirit, he spurned the chicanery of men who sought to entrap him for the sake of using his name and influence in furthering their own nefarious schemes. He was emphatically an honest man. In his own heart there was no corruption, and he could not tolerate it in others, and this fact, known to the community, gave him its confidence without any reservation.

Singularly quiet and unobtrusive, he had struggled for years at the bar before his great abilities were fully recognized, but during that period his mind was stored with the wealth which, later, was developed in such plenitude and power. In 1824 he entered the arena of politics, and represented this city in the lower branch of the Legislature, where he distinguished himself in debate, and secured the esteem and confidence of his constituents by his unremitting attention to their interests. As a member of city councils, and of the Constitutional Convention of 1837-8, Mr. Meredith became more widely known, and his abilities were appreciated not alone within our local boundaries, but throughout the Commonwealth.

President Taylor, recognizing his great ability and sterling integrity, called him into his cabinet as Secretary of the Treasury, a post which he filled until the accession of Mr. Fillmore to the presidency. In 1861 Governor Curtin appointed him Attorney General of Pennsylvania at an hour in our country's history when an incorruptible patriot, with a cool head and a brave heart, was required to discharge the high duties of the office. President Grant, not unmindful of his talents and profound legal acquirements, tendered Mr. Meredith the position of senior counsel for the United States government before the Geneva Tribunal of Arbitration, but his advanced years and waning health

caused him to decline the imposing honor.

Last fall the people of Pennsylvania elected him a member to the Convention sitting in this Hall to revise their Constitution. They remembered his valuable services in the Convention of 1837-8, and were anxious again to invoke his counsel and secure the benefits of his ripe experience and practical wisdom. On the assembling of this body Mr. Meredith was elected its President, and how well he discharged the functions of that honorable, but onerous, office, you all know of your own observation.

I do not attempt to analyze the character and legal life of the deceased; others on this floor, who knew him better, through daily intercourse with him in the profession, can do him ampler justice. We knew him, however, as a man upon whose escutcheon there never fell a stain; a man whose virtues shone forth with resplendent glory; whose life was spotless and uncontaminated by contact with the corruptions of the times. He has passed from our midst; from the fields of his usefulness in this world, to that higher and more glorious realm, where the good shall live forever.

"Sure the last end
Of the good man is peace. How calm his exit!
Night dews fall not more gently to the ground,
Nor weary, worn-out minds expire so soft:
Behold him in the even tide of life!
A life well spent—whose early care it was
His ripper years should not upbraid his green;
By unperceived degrees he wears away,
Yet, like the sun, seems larger at his setting."

Mr. SHARPE. Mr. President: We are conscious once again of the presence of death in this chamber. Since we crossed its portals on the sixteenth of July last, his messenger has summoned hence the distinguished and venerable President of this Convention. A prince and a great man has fallen in our midst. It seems hard, indeed, to realize that William M. Meredith lives no longer upon earth; that he hath gone down to the grave and shall come up no more; that he shall return no more to his house, neither shall his place know him any more. But he hath gone to his rest, full of years and crowned with honor. After having scaled all the difficult ascents of professional success, after having attained the summit of professional distinction, after having shed the effulgence of his radiant intellect upon the jurisprudence of his country and his age, after having filled the ear of

the nation with his great fame, he now sleeps well, where the weary be at rest.

I purpose not to enlarge upon the character, virtues, and career of this most remarkable man. Tongues far more eloquent than mine have done all this. Voices that have a much better right than mine to be heard on this melancholy occasion have spoken in fitting terms of the illustrious dead. Hearts that were knit to his by the closest ties of friendship, and cemented with his by a life-long intimacy and companionship, have come up into the mouth, and given utterance to their uncontrollable emotions. I have no ambition at all to thrust myself unduly upon the sacred solemnities of this sad hour. I only desire to add my humble tribute to the volume of eulogy that has gone forth from the hearts of this august body. I only wish to say that the chambers of my heart are also draped in mourning, and that in them dwells too the same consciousness that pervades this entire assembly, of the irreparable loss which we have sustained in the death of Mr. Meredith. The temptation to do so much was irresistible, for "I did love the man and do honor his memory, this side idolatry, as much as any." It is certainly safe to assert that there is not one of us whose heart-strings do not tone themselves in harmony with the voice of praise, and whose judgment does not commend the encomiums that have been heard here to-day on behalf of Mr. Meredith.

It matters not in what light we gaze at him, he dazzles us. It matters not in what pursuit we follow him, he was in all alike unapproachable. As a lawyer, learned, profound, unequalled. As an advocate, transcendently persuasive and eloquent. As a statesman, broad-minded, catholic and deeply versed in the science and true principles of government. As a patriot, imbued with a zeal and love of country far surpassing the passion of a devotee. As a citizen, progressive, enterprising, public spirited, and a lover of order. As a gentleman, without stain and without reproach. As a man, big hearted, benevolent, charitable, of unimpeachable integrity, and with the most exquisite sense of honor. As a *pater familias*, a model of all the domestic virtues. There was met in him, such a combination of rich qualities, great faculties and rare traits, as is seldom found in one man. But with all, he had an unassuming modesty and gentleness of deportment that added

additional lustre to the glories that clustered about and adorned his character.

He possessed also in an eminent degree that crowning ornament of all mental stature, *good common sense*. Without this treasure, the most shining parts and most brilliant faculties can only achieve but temporary success. The meteor that flashes across the midnight firmament, and then goes out in darkness forever, is a fitting emblem of genius, without the ballast of a sound judgment. But the intellect of Mr. Meredith burst not in meteoric showers. It shone upon everything it touched, with the steadiness and fixedness of the rays that come down from the sun. For he was not simply brilliant; he was also cool-headed. He had not the flash of genius merely, but with it, the clear-sightedness, calm deliberation, and sound understanding of the philosopher.

Neither was he one "to split the ears of the groundlings." He had no ambition at all for this. He had a native dignity of character, and an intense self-respect which lifted him high above all the arts and tricks of the demagogue. He was a statesman, but not a politician, in the present popular and degraded sense of that term. He was a party man but not a partisan. He had faith in the utility of parties in a republic, and he believed his party was right. He rejoiced in its triumph—not for the sake of the spoils of victory—but for the sake of its principles. Loving his country as he did he could not help loving his party, for to him the welfare of the nation was bound up in the success of his party. He had no confidence, however, in the jesuitical dogma that the end justifies the means, and therefore he loathed with intense loathing the bribery, corruption and intimidation which are the crying evils and the burning shame of the politics of the present times. No earthly consideration could have induced him to countenance the employment of any sinister means or improper agencies, although they might have been demonstrated ever so clearly, to be absolutely necessary to party triumphs. He had an abiding confidence in the common sense and inborn integrity of the people, and he infinitely preferred honorable defeat to dishonorable victory. His whole aim was the happiness of his race and the prosperity of his country. His loyalty to his party was meant for this and this only. Who can help but admire him for it?

Mr. President, I feel that it would be presumptuous for me to undertake to weigh in my small balances the value of the life work of Mr. Meredith. I am wholly conscious that I have no capacity to take in the full measure of that great man. But I trust that indulgence will be granted to a brief allusion to one or two phases of his career that have enlisted my closest attention, and excited my highest admiration. Coming to the bar as I did at the immature age of twenty, I had of course no experience in the fierce conflicts of the forum, and no knowledge of the professional athletes that struggled for the prizes in that arena.

But he whose death we mourn to-day was then in the zenith of his great fame, and its effulgence reached even me in my quiet obscurity. The heart of the young professional aspirant must necessarily have some idol. Its altar must burn incense to some Deity. I could claim no exemption from this common frailty—if frailty it indeed be. Hence, Mr. Meredith became the object of my hero-worship, for he had won victories more highly to be prized than the conquest of kingdoms. His brows were wreathed with greener and more honorable laurels than those of the war-worn and blood-stained chieftain. It became my delight to glean from every source, and to garner up in the cells of memory every fact and circumstance that entered into his early professional life. With what interest I pondered and mused and wondered over the wild bursts of passion, that must have swept through the chambers of his heart, and the rough conflicts that must have torn the realms of his mind, while he patiently waited for public recognition and appreciation during his long *novitiate*.

Such a contemplation was consoling and somewhat flattering, for it proved that genius must sometimes at least temporarily wear the fetters of mediocrity.

But when my mental vision, passing beyond this contracted and unnatural orbit of such a brilliant luminary, followed his subsequent career, and grasped its magnitude and power; when I read and studied the great cases which his intellect had illumined; when I came to know and comprehend, imperfectly it is true, the mental sweep that could by a touch make the most abstruse principles luminous to the commonest understanding, when indeed I suffered the pangs of hope-

less despair, for I realized that his goal was as far beyond my reach as the sun in the firmament. It was by such mental processes that I came to fix the professional standard of Mr. Meredith, for I had very few of the opportunities which some of the gentlemen of this Convention almost daily enjoyed of hearing and seeing him in this, to me, by far the most interesting walk of his life. To me he was the epitome of all that was admirable and great and worthy of imitation in a lawyer. He would as soon have thought of violating the decalogue as of violating his professional word. He was one of that old-fashioned type of lawyers that stoutly doubted the professional ethics that would teach that a client's cause is to be gained at all hazards, and by any means. Whilst he was loyal to his client, he was equally loyal to truth and justice. If he did not always gain his case, he always saved his self-respect and honor.

For the passion that weds me to my profession, I do therefore the more honor him, because he, most of all his contemporaries, did exemplify its dignity and pre-eminence above all other temporal pursuits. And I am glad to hear upon this floor that my appreciation of him as a lawyer has been fully sustained by those who are so much more able than myself to form a correct and discriminating estimate of him in this regard.

Time will permit but a passing allusion to his duties and position as the President of this Convention. His unanimous election to that dignified office was not only hailed with delight here, but also throughout the Commonwealth, as the harbinger of that reformation in political and governmental affairs which the people so devoutly longed for, yet scarcely dared to hope for. It was a fitting seal to that popular judgment which had long since singled him out and commended him as the first citizen and great glory of his native city and State. His government here was characterized by urbanity, impartiality, promptness and dignity. Such was the weight of his character, and the sense of his intense honesty of purpose with us, that his decisions became the unquestioned law of this body. His administration has left behind it no private grievance to canker in any bosom, and no feeling of intentional slight or personal injustice dwells in any heart in this assembly. It seems to me that it is the experience of every one of us, that he was one of the

very few great men who grew greater the nearer you approached him.

It was, therefore, with melancholy forebodings and sad misgivings, that we observed day by day the clay tabernacle that anchored his great spirit to earth gradually yielding to the assaults of disease. But he refused to put off the harness of active life so long as his spent frame could endure its weight. But though dead he yet liveth, and will live whilst learning and virtue and genius and moral greatness shall command the homage and admiration of the sons of men.

Mr. CURTIN. Mr. President: I had an expectation that the formal ceremonies of this Convention would occur to-morrow, and I would thus have had an opportunity of putting in proper and formal language my reflections upon the occasion of the death of its President, fully aware that that would be more respectful to the body than to offer any remarks in the crude form in which I fear they will now be heard. However, I shall have accomplished all that seems to be necessary on my part as a member of this body and personal friend of our late President when the declaration is made that every word uttered by the venerable delegate who moved the resolutions in such fitting, eloquent and truthful words now before us meets my most sincere and hearty approbation, and Mr. Meredith's professional career has been so well portrayed and so forcibly and beautifully expressed by his other colleague from Philadelphia (Mr. Biddle) that further remarks on either phase of his life and character would seem to be scarcely necessary.

This is the third time since our sessions commenced that we have been summoned to mourn the death of a colleague. William Hopkins, a wise and useful man, was the first to fall, and then that earnest, sincere and eminently practical man, H. N. M'Allister, whose death left a void so painful in the community in which he lived that all feel it. And now we are called to pay a fitting tribute to the memory of our really eminent and distinguished President. Who knows how soon the portals of this Hall may open again and the grim monster enter for another victim? And we would not if we could know who of the living may be the next to fall. I do trust that the survivors may complete the great task committed to them by the people of the State

and that we will not be again called to such a sorrow.

We bow before the wisdom of Providence in the death of our fellow-citizen and colleague, and there is no mark of official respect which this body can pay to the eminent ability, learning and virtue of Mr. Meredith that is not deserved. The tribute of admiration, of gratitude and love, which wells up warm from the human heart when a bereavement so heavy is suffered will follow him to his grave, and it may be truly said that if the blessings of the people of this State were flowers the grave of Mr. Meredith would be clothed in perpetual bloom.

The fame of a great lawyer dies with him, or at least dies with the generation that surrounds him. It is for those who enter the military service, or fill official place and distribute patronage, to live perpetually in history. The most fervid eloquence, the clearest logic, the deepest learning of the lawyer is only held in remembrance during the lives of those who encountered him in the legal forum or associated with him. In the judicial office, the most useful but the most unostentatious of all the departments of government, requiring the first minds, the deepest learning and the highest integrity, men are soon forgotten, and the fame of the judge, however eminent in his life and character, are only known and remembered by the lawyers who practiced before him or who read the books which contain the beauty of his language, his profound learning and illustrate his unsullied integrity. The lawyer or the judge has little more than this to expect, although his learning may be superlatively great and his life blameless. But it is equally true that while credulity and ignorance may be imposed upon in other professions, while the most learned physician may scarcely earn his bread and the empiric grow rich by imposition; while it may be said without irreverence or disrespect, that the superstitious and illiterate may accept teachings that are not founded upon the sacred and everliving truths of our religion and are not made pleasant and acceptable by the beauties of thorough literary training, no man can be eminent as a lawyer unless he has gifts and preparation that are apparent and real, for his duties are performed in the public gaze, in the presence of courts learned in the law; he deals with the interests, the passions and the sympathies of humanity, and he encounters in his professional life antagon-

ists who draw from him all his learning and challenge to the front all his resources, and a pettifogger may have a measure of success in the devices which degrade the profession, but he never has, he never can, impose himself upon the confidence of the people.

Some men at the bar excel in keen, sharp wit; some by the graces of their eloquence and the magnetism of their personal presence; some have mastered our language, others are remarkable for deep, accurate learning; others have intense industry and ability for constant labor. Either one of these qualities may make the successful practitioner, but it takes them all to make the accomplished lawyer. Of all the men of this day, of the living and the eminent dead of the State, no man combined all these qualities in such perfect harmony as Mr. Meredith. And then with his great learning, his profound logic, his exalted qualities as a statesman, his keen wit, his force and brilliancy as an advocate and his appreciation of humor and a consciousness of power that could not be disturbed, and a memory which retained all that passed in it and waited like a generous hand-maid upon his great qualities, there was around and about him that glory of the human character—virtue and integrity. It takes them all to make an accomplished lawyer and a leader of the American bar, and our dead President possessed them all in a most eminent degree.

If Mr. Meredith had a fault it was that he was over-sensitive as to his own reputation and character. He could not bear to be suspected of doing wrong. The very soul of truth himself, he expected to be dealt with truthfully by all who surrounded him. Alive, constantly, tremblingly alive, to the sacredness of his own character and reputation, he gave his hours of leisure to the society of those in whom he recognized such qualities. It is anomalous and yet it is true that these qualities stood in the way of Mr. Meredith's occupying high official place. It is strange that a man thus gifted by nature, thus learned, with his known purity of character, should not have held the highest official positions in the nation. But there are arts and devices known in American politics to which Mr. Meredith could not from his nature and training descend, and he passed a long life of labor and professional success, admired and respected by his brethren at the bar

and by the community in which he lived, rarely holding any official position worthy of his own merits.

It is true he for a time filled the office of Secretary of the Treasury; but, as has been well said, not long enough to develop there his great qualities as a statesman. It is true that he was called to preside over one branch of the government of this city for many years, and that he served as a member of the Legislature, and twice in conventions called to reform the Constitution. It is equally true that he held the office of Attorney General of Pennsylvania during six years, four of which were days and nights of anxiety, of labor, and surrounded by the convulsive throbs of the most wonderful war of modern times, when his great qualities were given to the service of the country, and only those who were near him measure justly the value of the service. The distinguished and venerable gentlemen from Philadelphia (Mr. Carey) has said that he accepted with reluctance the office of Attorney General. That is true, and the Executive from whom he received that office is not ashamed to say to-day in this distinguished presence, that he did earnestly solicit Mr. Meredith to take a place near him as his chief adviser, and that his acceptance of the office of Attorney General dissipated a cloud which hung over the administration and renewed confidence and gave new vigor to executive power. For his services there if for no other act of his life, the people of the State are under grateful obligations to him and the Executive he served under a lasting debt of gratitude, which he will ever feel and acknowledge.

I would not speak of Mr. Meredith in his family relations. Those who knew him best, in this city, know how dear he was to those around him. Those who knew him best know his affection, his indulgence, his kindness, and with what degree of love his family always surrounded him. There it is too sacred for us to intrude. God will apply balsam and balm to wounds he made. But I desire to say to you, gentlemen, delegates from this city of Philadelphia, that you do not know what pride our late President had in your city. If there ever was a man born in Pennsylvania who understood the true interests of the State, and fully appreciated the virtues and the good qualities of her loyal and true people, that man was William M. Meredith. If ever there was a man in Philadelphia, distinguished amongst the living or the

dead, who had especial pride in your city, that man lies in his grave, and we are paying cold formal honors to his memory; for never, at any time, did he forget the city of his birth, the friends of his youth, or the pride he had in your prosperity and individual happiness. When away from the city its history and men, and its future, were amongst his favorite topics of conversation.

But, Mr. President, the great event has occurred, and for Mr. Meredith the end of earth! There is for us to venerate and remember the fame that he gathered in his great life, and learning and knowledge he garnered with so much care, and his racy, quick wit, and his fervid eloquence, and charming social qualities and wonderful powers of conversation, and to so live that when we are called from earth the living may think of us as in sincerity and sorrow we now speak of him. We will remember him, and all that is said of him, during our lives, and who will then remember the great and good man. Let us in this Convention do what we can by any ceremony, by speech or resolution, to perpetuate the memory of our most enlightened and distinguished colleague, who honored this city by his presence and dignified this Convention as its presiding officer.

MR. WRIGHT. Mr. President: It is proper that the district which I, in part, represent should have a voice in the pending proceedings. And I therefore claim the attention of the Convention a few moments, while I add the tribute of my commendation to the many excellencies of the distinguished man who lately occupied the chair you are now chosen to fill. It was not my privilege, sir, to be intimately acquainted with Mr. Meredith, as he and I resided in different parts of the State and practiced at different bars; still he was known to me for many years. Indeed, near thirty years ago, he paid me the honor, whilst I was a resident of Bucks, of being a guest at my board. It was the first time I had been introduced to him. He at then appeared at the bar of that county in the trial of a cause, and I call to mind at this hour the plain, courteous and dignified type of his demeanour at the bar. I remember the terse, pointed and earnest way in which he submitted his legal propositions to the court. But what an address was his to the jury! The state of facts in proof which other counsel had elaborated by the long hour, this man in the exercise of his as-

tonishing power of condensation, cramped into the narrow space of a few minutes. But the brevity of the speech detracted nothing from its force. The whole ground was covered, and the jury took in the case at a glance—their minds were not overburthened by a mass of verbosity. He impressed me as the true model for imitation on the part of young beginners. I noticed, on this occasion that he took no notes of testimony, yet on the tablet of the great advocate's memory, every particle of the evidence, documentary and oral, was indelibly imprinted. He had no trouble in calling from this storehouse of the brain any portion of it needed.

Again I had the pleasure of seeing this renowned lawyer, a few years ago, at the Wilkesbarre bar, where my distinguished friend from the city, (Mr. Woodward,) as Chief Justice of the Supreme Court, was holding a special session. Those masterly traits, of which the delegate from Philadelphia (Mr. Biddle) has made such truthful mention, were at this time grandly displayed. And allow me, sir, a reference to an instance of his incomparable humor which convulsed both court and audience. A question arose as to what was, in law, the *filing* of a certain paper in the office of the Secretary of State. The opposing counsel contended that suspending it on a string, in the Secretary's room, was a legal filing. Mr. Meredith retorted by saying, "if that was so, the murderer, Brobst, (who had slaughtered a whole family just below the city,) had a few days past been most effectually *filed*, as he had been suspended on a very strong string, by the sheriff of Philadelphia."

But, sir, on this occasion, where many may desire to speak, it is commendable to be brief. I therefore close by adding the expression of my deep regrets, to those of my fellows, in a Providence we all have occasion to deplore. As a public body, we are deprived of his wise teachings, his extended learning, his great experience, and that nervous oratory that fixed attention and produced good results.

MR. J. N. HARRIVANCE. Mr. President: I do not feel fit on this occasion to speak, yet I would not be doing justice to my own feelings—the present promptings of my heart—if I were to remain silent.

Few men have lived in Pennsylvania that filled a larger space for brilliancy of intellectual power than our deceased brother member, Mr. Meredith. We scarcely feel competent to speak properly

of the great and good characteristics of the distinguished Meredith.

Eulogiums upon the life and character of the dead are often extravagant in expression, but it may be truthfully said that too much in honor of Wm. M. Meredith cannot be said, for he filled the full measure of greatness and goodness.

My first personal acquaintance with Mr. Meredith was when I met him some twenty-five years ago as a member of the convention of the Protestant Episcopal church of the diocese of this State. He was an active participant in the debates and one of its most honored and able members. No question seemed new to him, and in meeting in debate Binney and Sergeant and the late Chief Justice Lewis and other like distinguished laymen, Meredith on all occasions proved himself the equal, in clear and logical argument, of any of them. His greatness consisted not alone in his unsurpassed legal and literary attainments, his broad and comprehensive views as a statesman, his unselfish and devoted patriotism, but deeper and better than all, in his zeal, rational and pure, in the cause of the christian religion.

It is not my purpose to repeat the many marked and honorable events of his life. They have been well and ably referred to by the distinguished gentleman from Philadelphia (Mr. Carey) and others.

The most beautiful eulogium that we meet with anywhere is that pronounced by the Hon. Horace Binney on the life and character of Chief Justice Tilghman, and we have but to read it and see in it every grand sentiment therein uttered by Mr. Binney an appropriate application to our distinguished, honored and loved Meredith.

MR. CUYLER. Mr. President: Deeply as I feel the solemnity of this occasion, if I consulted my own feelings I should be silent, for I can add nothing to the admirable analysis of Mr. Meredith's character which has just been given by the gentleman from Franklin, (Mr. Sharpe), nor anything to the impressive beauty of the tribute which has been paid to his memory by the distinguished delegate from Centre, (Mr. Curtin,) whose long and close personal as well as official relations with him enable him to speak with so much of appreciative force and judgment of Mr. Meredith's character and of his eminent public services. But thirty years of professional life, which in its earlier struggles was cheered by the kind commenda-

tions of Mr. Meredith, and in which afterwards sometimes I felt his steel as an opponent and at others was grandly aided by his association as a colleague, forbid that I should be entirely silent on this occasion.

But sir, there are some events which are of their own nature so eloquent that no utterances of human lips can add to the impressive power with which they touch our hearts and move our sympathies; and death is one of these. Nothing can be more eloquent than that silence which the very presence of the King of Terrors himself inspires! Three times since this Convention first assembled has death entered through its open door into our very presence, and beckoning to one of our number, has led him forth from our midst, never again to return to us from the silence and the solitude of the grave, whither he led him. We listen to the sound of their retreating steps till they fall no more upon our ear; we linger about the spot and long for their return and hope that they shall come again; but they return to us in this world no more forever! But, though they have gone from us, they do still abide with us; not indeed in the flesh. We miss the genial smile, the kindly pressure of the hand, the eye that sparkled at our approach, and the lip that bade us welcome. These are gone forever; but in a higher and a truer sense of the word, they do still live and abide with us always. They live with us in the pleasant memories of well spent lives. They live with us in the good they have achieved. They live with us in the impress they have left upon the world in which they lived and moved, and acted an important part. And now, sir, death has come again and has called from us the honored gentleman who graced the chair to which you have this morning been elected. He was full of years, and full of honors, although his unwearied shoulders still bore the harness of an active life. Such a death, though sad, is not melancholy, for Mr. Meredith had achieved all that life could give. Fame was his, and honor, and troops of friends, and crowned with the grand fruitage of a well spent life, he was gathered at last to his fathers, while the tears of a sorrowing Commonwealth bedewed his grave.

And now, sir, what can I say with regard to the character of this eminent and gifted man, after that which has been already so well said this morning? I need not speak of his public life. It has been so recent and is so fresh in all our

memories that it needs not to be recounted in this presence, and yet we cannot think of it without the sad reflection that with all those grand capacities for usefulness in public station which adorned the character of Mr. Meredith, the period of his public service was comparatively so small. Is it, sir, a fault, is it a defect in our institutions, is it a lack of appreciation in the American people, is it from any cause a lack of power in the American people to do that which they should do, which has robbed this Commonwealth and this nation of the inestimable services which the noble capacities of this man would have rendered to this State and to the country at large? Is there not somewhere a defect that while all intelligent minds confess and did confess while he lived that rarer gifts for public service had never been before garnered up in any man than in him, still that man failed to attain the highest honors of public position? It was no loss to him; his character would have been no grander with that sort of appreciation, but it was a loss to the people; it was a loss to the Commonwealth; it was a loss to the nation at large, that this man of grand abilities, found under the operation of our institutions so little opportunity to apply those abilities through a long life in public station for the public welfare and the public benefit. The true arena for Mr. Meredith was the Senate of the United States, where he would have been the peer of any of those brilliant statesmen who have illustrated and adorned that body in its most palmy days, or the bench of the Supreme Court, where his name would have been illustrious, and his fame as a jurist made a permanent inheritance of our country.

Sitting here to-day in the discharge of a statesmanlike duty let us inquire and consider is there anything we can do that shall in the future, when God shall gift the world with men of rare intellect such as his and rare adaptations for public usefulness may secure them to the public service.

But, sir, the grandest achievements of Mr. Meredith's life were professional; and, as has been most truly and most sadly remarked this morning by the gentleman from Centre, (Mr. Curtin,) they pass away; for the fame of a great advocate, no matter how great his fame may be, is written in the water. All those glorious gifts of intellect, that power of repartee, that wonderful irony, that

scathing use of sarcasm, that powerful heart that by its own emotions moved all other hearts with which it came in contact, these have left their impress, to be sure, in the results that have been achieved, but they have passed away and will soon be forgotten, for the material in which the advocate works is the air, and as one writes in vain upon the air so is it with the reputation of a great lawyer. It is a sad thought that it should be so, but it is a true thought, impressively true. His fame is as transient as the emotions which his eloquence inspired. Their memory extends not beyond the living generation, and with them it passes away and leaves no record to survive.

Mr. President, in this gentleman were garnered up the rarest and the most wonderful gifts of advocacy that I have ever known or probably any of us have known to be combined in any one individual, vast learning, wonderful logical power of mind, skillful analysis, powerful sarcasm, a fund of humor that moved your heart and your feelings so that you scarce knew whether to laugh or to cry; a power to mould other men's mind into sympathy with his own and to work out the persuasive results of the great advocate, surpassing those that I, at least, have ever known to exist in any one individual. But they are gone. When this generation shall have passed away, they will cease to be remembered. Even now their record abides chiefly in the homes that have been made happy, or with those whose rights have been vindicated, or whose interests have been protected; but beyond these scarce a memory abides. It was my fortune to be thrown into intercourse with Mr. Meredith, from the accident of professional relations, under circumstances that perhaps gave me peculiar opportunities of knowing how true it is that what I have said with regard to him this morning is a correct delineation of his character. I have seen Mr. Meredith in conflict with some of the most accomplished advocates in our profession, who, in my own time, have adorned the stage of action. All of us will recognize in Mr. Stanton a great, a learned, and an eminent lawyer, and yet I hesitate not to say that Mr. Meredith was immeasurably his superior in the accomplishments of a great advocate; for while Mr. Stanton had vast learning, powerful logic, and an earnest and forcible manner, he lacked the humor, the wit, the exquisitely fine power of analysis which so remarkably

characterized Mr. Meredith in his great professional efforts. He could not appeal to the imagination as Mr. Meredith could. He could not take strong hold upon the hearts of those whom he addressed, and move them to action, as Mr. Meredith was so capable of doing. He had not that same magical skill which Mr. Meredith possessed, when he played upon the heart strings of a jury as some skilful player upon an instrument sweeps its chords and renders them vocal with the sympathies which for the time move his own heart.

It is perhaps out of taste to allude to a gentleman now living and a member of this body, and I should hesitate to do so, but the gentleman from Luzerne (Mr. Wright) has this morning alluded to it—I mean our friend and colleague, Judge Black. Perhaps the grandest professional struggle that it was ever my fortune to witness was the very one which was referred to by the gentleman from Luzerne, the contest between the Commonwealth and the Atlantic and Great Western railway, Mr. Meredith being the Attorney General of the State, with regard to the consolidation of the three divisions of that road in three different States into one road. None who were present on that occasion—and there are some here, beside myself, who were present—will ever forget the wonderful powers of logic, the marvellous sarcasm, the tremendous struggle of those two legal giants on that occasion.

I might go on and multiply illustrations, but there are others doubtless desirous of speaking. I did not desire to speak, and I have been betrayed into the remarks I have uttered, because I felt that coming from the same bar and representing the same profession, a duty rested upon me which forbade me to be entirely silent.

MR. WOODWARD. Mr. President: Just returned from a long journey, I had no intention whatever of occupying any time in the Convention to-day, but I am told by friends around me, for whose judgment I have great respect, that it is my duty to say something; and if it be, it is a duty which I can perform with a good conscience and with great respect to the memory of Mr. Meredith as much so as in respect to any man of my acquaintance who could have been snatched from us by death.

Mr. President, in the old time the friends of Job mourned with him in

silence; but in our day we celebrate our grief with words. It is an American habit, and perhaps it is wise to express all we feel. The words that have been uttered this morning are things. They are "apples of gold set in pictures of silver." They have proved grateful to my feelings as the friend and admirer, life-long, of Mr. Meredith, and I trust they will prove a solace to his afflicted family.

Mr. Meredith's life and career have been so fully discussed by those who have preceded me, that it would ill become me to occupy the ground that has been so well cultivated. But having sustained two relations to Mr. Meredith in life of great importance, I may be pardoned for briefly alluding to them. The first was as a fellow-member of the Reform Convention of 1837, to which my friend from Chester (Mr. Darlington) has already alluded, and I entirely concur in the statement made by that gentleman as to the prominent, the commanding position of Mr. Meredith in that Convention as a public debater. Indeed, sir, in all the experience I have had in life, sometimes ambitious to listen to public orators, I have never witnessed a debate that could compare with that which occurred between Mr. Meredith and the late Mr. Stevens. I doubt if there be anything in the annals of our country which, if properly presented, would so impress the public mind as the scenes of that day. Why, sitting beside me was a coarse, uneducated, though honest and worthy man, who had been brought up to a business that was as well calculated to harden the human heart as any other, and as Mr. Meredith poured out the thunders of his sarcasm and invective upon the head of Mr. Stevens, that man was moved almost to tears. "My God," said he, "Mr. Woodward, this is too hard on him." And yet he was no admirer of Mr. Stevens. I cannot detain you by any further allusion to that scene. I cannot reproduce it. I wish I could. Mr. Stevens, as you know, was a man of great ability; he was a man of rare eloquence and a man of infinite sarcasm; but that day he found "a foeman worthy of his steel." That day his batteries were silenced utterly.

I want to allude to one other passage in Mr. Meredith's life, in which I bore relation to him. In 1852 the good people of this Commonwealth placed me upon the Supreme Bench. That brought me into direct and constant intercourse professionally with Mr. Meredith, for he was largely engaged in the business of that

court. I had known him slightly before the Reform Convention; I had known his reputation in the Legislature well; I knew him very well in the Reform Convention; and now I was not only to hear him but to feel him as a lawyer at the bar.

Mr. President, let me tell you that courts of justice composed of mere men of like passions and sensibilities with ourselves, are impressed by those sterling qualities of character which some counsel bring to the advocacy of their client's cause, and it is no uncommon thing to hear lawyers complain of judges that they have favorites at the bar; and if you analyze this complaint you will find that the favorites are men of learning, men of honor, men whom the judge has learned from experience that he can trust, and therefore they are favorites. If I were speaking in the presence of men who had had experience on the bench, they would recognize the truth of this remark. Judges have no favorites in any bad sense of that word, but it is a delight to a judge or a bench of judges to see before them a man who they know would not mislead them for any fee that might be paid him; to see before them a man whose object is not so much victory as truth; a man who has informed himself before he attempts to teach others; a man of integrity. And if to these sterling qualities he adds what our deceased friend possessed in an eminent degree, wit and humor and address, such a man is most acceptable to the court, and he is in great danger of falling under the invidious remarks of others as being a favorite of the court. Professional ethics, sir, are not studied as much as they ought to be. If a lawyer has a case before a judge and knows that the authority upon which he is asking the judge to rule that cause has been itself over-ruled, I hold he is bound by the highest consideration of truth and of the oath he has sworn to present the law to the judge as he knows it exists. He has no right to impose upon the court with a case which he himself knows, though the judge may not know, has been over-ruled. This man, sir, of whom we are speaking would have suffered martyrdom before he would have imposed upon a judge a case as evidential of the law when it was within his knowledge that that case had been over-ruled. He would distinguish that which was distinguishable, but be the consequences to his argument what they might, he would exhibit the mind of the law to the

judge just as he found it; and therefore the judge would trust the advocate. That is the way that Mr. Meredith grew in the confidence of the Supreme Court and of all the courts before which he practiced. That is the way that any lawyer may acquire the confidence of a court; it is the only way. Trick, falsehood, suppression of the truth belong to another class of practitioners. Mr. Meredith was incapable of either.

Mr. President, had Mr. Meredith's lot been cast in Rome in the best days of the republic or of the empire, amongst those orators who thundered in the Senate, he would have won the highest civic honors and been accounted "the noblest Roman of them all." Had Mr. Meredith's lot been cast in England, where from the lowest point in the profession to the wool-sack itself the profession has gradations, genius like his would have passed through all these stages to the highest with rapidity. I undertake to say that there has been no man in our day who has occupied the wool-sack or any other exalted position in the judiciary of Great Britain as worthy of the place, and who has illustrated it with so great a variety of elegant learning as Mr. Meredith would have done had he been bred at the English bar.

But, sir, he was born a Philadelphian. He lived here. He was an honor to this city and to this State. Some gentleman remarked this morning—I believe it was Mr. Biddle—that while Mr. Meredith belonged to the old Federal party he nevertheless was a sort of States' rights federalist. That is true. I do not believe that there ever lived in Pennsylvania a citizen who loved Pennsylvania better than he; who was truer to her true interests and her true honor. No politics; no inherited maxims, nothing that he had been taught in the old federal school would ever have induced Mr. Meredith to surrender one jot or tittle of the honor or the interests of his native State. Like other thoughtful men, he understood how the relations of the State to the federal government could be as harmonious as the planets of our solar system, how each could revolve around its own centre whilst it occupied its orbit. He would keep the State in its own orbit; he would keep the federal government in its centre. As to the modern idea that I have seen in print over the signatures of responsible public men, that the federal government made the States, that the States were indebted

to the federal government for their existence, Mr. Meredith was incapable of being misled or imposed upon by such a solecism, such an absurd inversion of our political history. No, sir, he was a Pennsylvanian. His heart was too large for this city, great as this city is; it embraced the whole Commonwealth; and if you want to see how he vindicated his own relations to the internal improvement system of Pennsylvania, go to the volume of Debates which contains that controversy between him and Mr. Stevens. No man in the Legislature occupied a more prominent or influential position in behalf of the system of internal improvements of Pennsylvania that pervaded every part of the State than did Mr. Meredith, and the accusation which Mr. Stevens brought against him, that the city of Philadelphia was unfriendly to the interior portions of the State, was met and answered from the journals and from the current history of the country in the most triumphant manner, so much so that it has never made its appearance in public since.

Mr. President, allusion has been made to a scene which I remember with great interest. Gentlemen have alluded to a debate at Wilkesbarre before the Supreme Court in the year 1865 or 1866. It was summer. We were in the habit of meeting in July to finish up the work of the year. The other judges of the court insisted upon accepting an invitation to hold that term of the court at Wilkesbarre. I was opposed to it myself for reasons that were personal, but I was over-ruled. The court met at Wilkesbarre. A number of important cases, among which was the one alluded to by Mr. Cuyler, were to be argued there, and, sir, it was a rare collection of rare men. Mr. Meredith, Judge Black, Mr. Cuyler, Mr. Porter, Mr. Wharton, Judge Church, Mr. Biddle, Mr. Walker, and others like them were in attendance. The case was an important one. These counsel were divided upon the one side or the other. The Supreme Court had never sat in that interior town before and has not since. It excited great interest. Not only all the young lawyers went to the court house, but the ladies went, the people generally went; the court house was filled with beauty and intelligence that day.

Well now, sir, what impression was produced by the struggle between Mr. Meredith and Judge Black, over that case, you may infer, when a lawyer of great respectability told me afterwards

that he was going to take down his sign and shut up his shop. Said he: "I find I am wrong; if this is the way to practice law, I am no lawyer." I said in reply: "that is nonsense, sir, you are a young man. Mr. Meredith told me that he waited twelve years for a case after he was admitted to the bar, and that he employed those twelve years in studying the old entries and pleadings, the State trials, which he read, not for the dramatic interest of the State trials, but for the pleadings." He studied law, in other words, and here were the fruits; and, I added, "this man has made himself what he is by labor; there is no royal road to success in our profession more than any other; it is labor. *Improbis labor omnia vincit.*" Instead of tearing down your sign, go to work afresh, read the old entries, as Mr. Meredith did, read the State trials, read the history of the common law; get imbued with it, and by and by you will be able to wield such a lance as you witnessed in the hands of this giant." It was a grand spectacle, that! I would not have alluded to it if other gentlemen had not done so, but they have stirred up a memory which you will excuse me for enlarging upon in the way I have done. I would like to mention other instances of Mr. Meredith's professional relations. I cannot see that there would be impropriety in my alluding to one of them.

I think the first time I was called on to hold the court of *nisi prius* in this city after I came upon the bench, a case was on my list which was a replevin, but upon opening the record I found it to be a case in admiralty which involved the title to the ship "Royal Saxon," an Irish vessel lying at Walnut street wharf, which had been libelled in the federal courts for seamen's wages, had been attached by a foreign attachment by a creditor of the owner; and here was a conflict between the Federal and State jurisdiction as to the ship, involving as it necessarily did on one side much of the admiralty law. Well, sir, I was alarmed, for while I had read somewhat about admiralty law in my younger days, I never had tried a case in admiralty in my life, nor seen one tried. But there was no escape. The case must be tried. Mr. Meredith was counsel on one side and Judge Cadwalader and some other gentleman on the other. The cause was tried. Mr. Meredith came up to the bench after the jury retired, with the remark that he was not in the habit of complimenting judges, but said he, "you

have got all the admiralty law into your charge." I said: "Mr. Meredith, we have no admiralty law up in Luzerne county. I never saw any before; and I was alarmed at the prospect of administering it in this case." He was kind enough to say that the case had been well tried. The jury rendered a verdict in his favor. It went to our Supreme Court, and they affirmed it. It went from there to the Supreme Court of the United States. It was argued before a bench lacking one judge. The eight judges differed equally, four and four. It was ordered to a reargument. It was argued again before a full bench, and was affirmed by a single casting vote. If gentlemen choose to read the case of the "Royal Saxon" in the reports, they will find that I state it correctly. Of course it was a close case.

Now, sir, what I want to say is this: That in the kindest way Mr. Meredith guided me in that first admiralty case that I ever tried, and he guided me right, as it turned out in the end, by a single casting vote of the Supreme Court of the United States. Chief Justice Taney dissented and delivered a dissenting opinion, but a majority affirmed our judgment.

Why, sir, a professional life is full of such reminiscences. Somebody has said that a great man has departed. A great man, indeed, sir! We did not appreciate him. It is the habit of the American mind not to appreciate their great men. The American people seem not to discover the good qualities of a man until he is dead. The old Romans treated their public men differently. If a general achieved a victory for the Roman arms, a triumphal arch was erected, he was welcomed home with wreaths and banners and music, and orations were pronounced upon him, and he was permitted to know what his fellow countrymen thought of him. And so were men of genius, whether orators or poets, honored with public ovals. But, in our day, the case is very different. The living man is continually belittled. He is regarded as in the way of somebody; he is slighted; he is neglected; and yet, when we look at his works, when we listen to his thoughts, after death has set its great seal upon him, we all discover that our fellow-citizen was indeed a great and good man. We withheld the meed of praise during his life, but we hasten to bestrew his grave with flowers, now that he is gone.

Mr. President, in that inimitable form of prayer that is used at the grave prescribed by the Church of England we are directed to "render hearty thanks for the good examples of all those who having finished their course in faith do now rest from their labors." Hearty thanks, sir! "Hearty thanks" are due only for great blessings; and is it not a great blessing that we have such an example, the example of such a life as Mr. Meredith's; his learning, his acquisitions of knowledge, his use of that knowledge in illustrating his profession, his high-toned honor that never knew a stain, though he would have felt a stain worse than a wound. Yes, sir, let us be thankful for the good example of this man, especially now that his work is finished. There is no more danger to him. There is no mis-step that he can take. His labor is done; his work is finished; his record is made up forever. And, sir, allow me to add in conclusion that he died as he had lived, in the faith of Christ, because without a touch of fanaticism about him, with no ostentation in his religion, Mr. Meredith was an humble and faithful believer in Christ and a member of Christ church in this city and for many years an honored representative in the Diocesan Conventions, as we all know.

Sir, I rejoice to honor such a man. I would our land were full of such men. I know he was a man of honor and integrity. I know he was a man of learning and ability. I rejoiced to see him occupy the chair which you, sir, so honor. I mourn his removal from us, but bow in humble submission to the Divine will.

Mr. ARMSTRONG. Mr. President: Were I to follow the dictates of my mere inclination, I should be silent, and yet I have so profound a regard for the memory of that great man whose place death has made vacant in our midst, that I feel impelled to lay my tribute of respect upon this monument which we are rearing to his memory.

It often happens that on occasions like this eulogy runs riot and many things are said which calm reflection might not justify, but I believe it would be difficult to say anything of Mr. Meredith, either in eulogy of his personal character or of his high attainments which the facts would not amply justify.

My first acquaintance with Mr. Meredith was as junior counsel in an important cause some eighteen years ago. I am proud to believe that from that time till

his death I enjoyed his personal friendship. Nothing in the intercourse which occasionally I was permitted to enjoy with him so impressed my mind as the genial kindness, the courtesy, the forbearance, and the consideration which he always manifested for the opinions of those who in his presence could not fail to be conscious of their great inferiority. He was doubtless fully aware of his own great powers, but they never led him to any vain display of learning or any offensive assertion of superiority.

I do not rise, sir, for the purpose of adding anything of fact to what has been already so well and so fully expressed, nor to attempt any analysis whatever of his character. All this has been far more aptly and ably done than I could do. I will only add there has been no commendation expressed in which I do not most heartily concur.

His great learning was manifest in a thousand ways. In a case only two years ago in which I had the satisfaction to be associated with him, involving the relations of the clergy to the church and involving also the correlative rights of the clergy as citizens, and requiring an exhaustive examination and consideration of the canon law of the church from its earliest date, Mr. Meredith not only brought to its consideration his accustomed discrimination and profound learning, but I know that he examined with untiring care the canons of the church in the original language, and verified every translation we had occasion to make by his own personal examination and reading in the original Latin.

It has impressed me strongly as conspicuously characteristic that he was always equal to the occasion. It is one of the clearest indications of men of great genius that placed in whatever situation they may be, they are always equal to the demands which are made upon their learning and their ability. This striking feature of Mr. Meredith's character was always apparent, whether as member of the Legislature, as member of both the Constitutional Conventions of the State, as Secretary of the Treasury, as Attorney General of the Commonwealth, or in the

distinguished course which marked his professional career. He never was found wanting in any position he ever occupied, and I believe no higher indication of true genius can be found.

He was a man of rare observation of men, of manners and of things. He gathered information from all sources, and his judgment and reflection made them all his own.

He was one of those rare men who found

"Tongues in trees, books in the running brooks,
Sermons in stones, and good in everything."

It was characteristic of his life. Nothing escaped his observation, and upon all occasions the information he possessed was ready to his hand.

Mr. President, I forbear to speak further. I have said this much simply because in my ardent admiration of the man, in my deep respect for his memory, and in the friendship which I am proud to feel that I enjoyed while he lived, I could not allow the occasion to pass without this brief tribute of respect to his memory.

THE PRESIDENT. There is a blank to be filled with a number before the vote is taken on the resolutions. Will some gentleman move to fill the blank?

MR. STANTON. I move to fill it with "nine" as the number of the committee.

The motion was agreed to.

THE PRESIDENT. There is another blank as to the hour of meeting to-morrow.

MR. LILLY. I move to fill that blank with ten o'clock.

The motion was agreed to.

THE PRESIDENT. The question now is on the resolutions which have been read.

The resolutions were unanimously agreed to.

MR. FELL. I move that the question of filling the vacancy be referred to the delegates at large elected on the same ticket with Mr. Meredith.

The motion was agreed to.

THE PRESIDENT. The Convention, under the resolutions adopted, stands adjourned until to-morrow morning at ten o'clock.

ERRATA.

On page 14, first column, twenty-ninth line from top, for "inconsiderable" read "unconscionable."

On page 198, second column, fourth line from bottom, for "officers" read "auditors."

On page 203, second column, second line from top, for "motion" read "section."

On page 247, second column, fourth line from bottom, for "engage" read "enlarge."

On page 250, first column, nineteenth line from bottom, for "rejected" read "agreed to."

On page 260, second column, twenty-first and twenty-second lines from top, for "regulating" read "relegating."

On page 382, first column, twenty-seventh line from top, for "of *flat*" read "*flat* of."

On same page and column, twenty-ninth line from top, for "expurged" read "expunged."

On same page, second column, third line from bottom, for "county" read "country."

On page 574, second column, eleventh line from top, for "vast" read "fast."

On page 602, second column, sixteenth line, the name of Mr. ARMSTRONG should precede the words, "I will not encroach," &c.

On page 606, first column, twenty-first line from bottom, for "question" read "custom," and the word "and" before the word "until" in the following line should be omitted.

On page 664, first column, twenty-eighth line from top, for "surmounting" read "surrounding."

On page 724, second column, eighth line from bottom, for "twenty-four" read "seventy-four."

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